

**5/11/77 [3]**

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THE WHITE HOUSE  
WASHINGTON  
May 11, 1977

The Vice President  
Hamilton Jordan  
Mark Siegel

The attached is forwarded to you  
for your information.

Rick Hutcheson

Re: Senate Prospects - 1978

THE WHITE HOUSE

WASHINGTON

May 3, 1977

MEMORANDUM TO: FRANK MOORE  
DAN TATE

FROM: BOB THOMSON *BT*

RE: Senate Prospects - 1978

The following is a brief summary of where we stand with respect to the 1978 Senate races compiled from Democratic sources on the Hill:

DEMOCRATIC SEATS

ABOUREZK (S.D.) - Retiring. This will be a tough race. Governor Kneip is a viable Democratic candidate if he chooses to run. The GOP may have a bruising primary between Cong. Pressler, Abdnor, and Leo Thorsness, McGovern's opponent. Pressler is their strongest candidate.

ANDERSON (Minn.) - Looks very strong. Cong. Frenzel would be strong opponent.

BIDEN (Del.) - Very strong. Statewide poll in December gave him job rating in high 80's.

CLARK (Iowa) - The Senator is vulnerable, particularly if Governor Ray decides to run. They had an excellent fundraiser last month, thanks in a large part to an appearance by the Vice President. Nevertheless, this is a trouble spot.

EASTLAND (Miss.) - May retire. Possible Democratic candidates are Governor Finch and Cong. Bowen. Possible GOP candidates are Cong. Cochran, Cong. Lott and Gil Carmichael.

HASKELL (Colo.) - Vulnerable. Possible GOP opponents are Cong. Armstrong and former Gov. Love. Haskell will have money problems. Armstrong will have access to substantial right wing money.

HATHAWAY (Maine) - This will be a very tough race. Cong. Cohen is a likely GOP opponent. The Governor may run as an independent.

HUDDLESTON (Ky.) - The Senator is considered very strong.

JOHNSTON (La.) - Barring a bruising primary with Gov. Edwards, the Senator should be in good shape. A December poll gave him a job rating 9 points more favorable than Russell Long.

MCCLELLAN (Ark.) - May retire. Democratic candidates would be David Pryor, Jim Guy Tucker (A.G.) and Cong. Thornton, among others.

MCINTYRE (N.H.) - Looks fairly strong, but they are worried about Gov. Thompson. The Governor would be a strong well-financed opponent.

METCALF (Mont.) - May retire. We should retain this seat, but there will be problems in the primary if Cong. Baucus and Gov. Judge both seek the nomination. The GOP candidate may well be Burger again. He ran well against Melcher.

NUNN (Ga.) - Very strong. Gov. Busbee will ~~apparently not run in the primary, particularly if the Succession Bill is passed.~~

PELL (R.I.) - The Senator is in trouble. A probable GOP opponent is the Mayor of Providence, Vincent Cianci. He has strong Italian and Catholic support. The abortion issue will be very important.

RANDOLPH (W. Va.) - May retire. We will have difficulty retaining this seat if Arch Moore is the Republican candidate.

SPARKMAN (Ala.) - May retire. A January poll indicated that Gov. Wallace had only 50% support in a Senate primary match-up. Other Democrats are interested, including the Chief Justice of the State Supreme Court.

REPUBLICAN SEATS

BAKER (Tenn.) - There is a growing feeling that Baker may be vulnerable. He does not get back to the state as often as he should and the newly-released Watergate transcripts keep mentioning his name in an unfavorable light. However, the Democrats need a candidate.

BARTLETT (Okla.) - May retire. Recently had surgery for lung cancer. If he runs, he will be safe. Our prospects are Ed Edmondson, Derryberry (A.G.) and Gov. Boren.

BROOKE (Mass.) - May be vulnerable because of well-publicized misuse of surplus campaign funds; will be hard to beat though without a strong candidate.

CASE (N.J.) - May retire. Several Democrats are interested in running, but the picture will not clear up until after the Governor's race. This could be a chance to pick up a seat.

CURTIS (Neb.) - May retire. Governor Exxon would be a strong Democratic candidate. The GOP may have to rely on McCollister, who lost last time to Senator Zorinsky. We could gain a seat here.

DOMENICI (N.M.) - Strong. The Senator is apparently very popular and well-respected. He will be tough to unseat.

GRIFFIN (Mich.) - Retiring. Griffin just announced his retirement, so the situation is unclear at this point. There are numerous Democrats that are interested.

HANSEN (Wyo.) - Possibly may retire. If he does, we may have a chance to pick up the seat.

HATFIELD (Ore.) - Very strong. A Democrat to the right of Hatfield could stand a chance.

HELMS (N.C.) - Helms may be vulnerable, but only if the Democrats unite behind a candidate. Possibilities are Rufus Edmisten, Cong. Neal, and Luther Hodges, Jr.

McCLURE (Idaho) - Looks very strong.

PEARSON (Kans.) - May be vulnerable. The Senator does not visit Kansas very much. Nevertheless, the Democrats will have difficulty fielding a viable candidate. Bill Roy and former Gov. Docking are possibilities.

PERCY (Ill.) - Tough to beat.

SCOTT (Va.) - Retiring. If Andy Miller does not become Governor, he would be a strong candidate. Apparently, Zumwalt is also considering the race. Linwood Holton would be a strong GOP candidate, but John Warner is also a possibility.

STEVENS (Alaska) - Very strong.

THURMOND (S.C.) - As usual, there is optimism that Thurmond can be beaten. Pug Ravenall would be a strong Democratic candidate, as would Cong. Derrick.

TOWER (Texas) - The Senator may be vulnerable, mainly because Reaganites in Texas are down on him. John Hill (A.G.) would be a strong Democratic candidate. Cong. Kreuger and Barefoot Sanders are also interested.

THE WHITE HOUSE  
WASHINGTON

*No time -  
Hold until after  
Summit  
J*

29 April 1977

MEMORANDUM FOR THE PRESIDENT

FROM: RICK HUTCHESON *RH*

SUBJECT: Decision Memorandum on Proposed  
Environmental Message

Charles Warren's memo is attached. Comments from Eizenstat, Watson and Lance are interspersed throughout the memo at the appropriate point in the text. No other staff comments were received.

Griffin Smith of Jim Fallows' staff has been working with CEQ on the Message itself; so far, he has cut it in half, from 106 to 50 pages in length.

FALLOWS recommends that you further reduce the Message by:

1. eliminating subjects you have covered in other Messages (e.g., oil tankers, natural gas policy).

☐ approve ☐ disapprove

2. restricting the Message to "traditionally environmental" subjects, to avoid diluting its impact. At present it contains many items (e.g., OSHA, neighborhood planning) which have been included mainly to attract the support of those constituencies.

☐ approve restricting Message to traditionally environmental subjects

☐ disapprove

Given the constraints on your time before the Summit, EIZENSTAT recommends sending the Message after the Summit. Warren recommends a May 4 release date.

☐ before Summit if ready ☒ after Summit

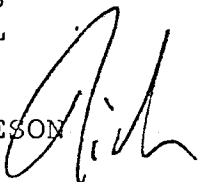
MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

INFORMATION

2 May 1977

TO: CHARLES WARREN  
STU EIZENSTAT  
JACK WATSON  
JIM FALLOWS  
JODY POWELL  
BERT LANCE

FROM: RICK HUTCHESON 

SUBJECT: Environmental Message

The President returned the decision memorandum & comments in his Outbox with the comment, "No time - hold until after Summit." I will hold the memo, and resubmit it after the President returns from Europe.



THE WHITE HOUSE  
WASHINGTON

[Held for VP  
#1 Fri PM  
B

Date: April 23, 1977

MEMORANDUM

FOR ACTION:

The Vice President  
Midge Costanza Jack Watson *attached*  
Stu Eizenstat Jim Fallows *a Hatched*  
Hamilton Jordan Bert Lance *a Hatched*  
Bob Lipshutz Jim Schlesinger  
Frank Moore Charles Schultze *nc*

FOR INFORMATION: Jody Powell

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Charles Warren memo 4/22 re Circulation of Attached  
Memorandum to Senior White House Staff.

YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:

TIME: 10:00 A.M.

DAY: ~~Thursday~~ Friday *per SE request*

DATE: April 28, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

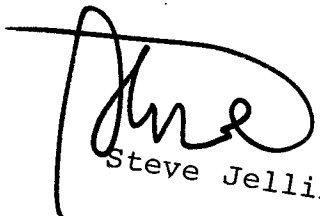
COUNCIL ON ENVIRONMENTAL QUALITY  
WASHINGTON, D. C.

5/6/77

Rick:

I have attached a new page 8 which is to replace the current pages 8 and 9 of the Council's April 22 Memo for the President on the Environmental Message. We would appreciate it if you would insert this replacement into the copy that goes to the President when he returns from Europe.

Thank you.

  
Steve Jellinek



8. Barrier Islands: A proposal to direct the Secretary of Interior to develop recommendations for appropriate federal action to protect barrier islands from unwise development.
9. Land and Water Conservation Fund: A proposal to direct the Secretary of Interior to encourage states to consider property acquisition along waterfronts as an element in the Land and Water Conservation Fund in order to capture the benefits of the Federal water pollution control program.
10. Environmental Review Laws: A proposal to instruct CEQ to study federal environmental review requirements and recommend measures to clarify and integrate them.
11. Alaskan Heritage: Proposed statements in general support for moving ahead with designation of parks, wildlife refuges, forests, and scenic rivers in Alaska; a promise to develop detailed recommendations in time for Congressional hearings.
12. Urban Environment: Proposals to direct the Secretary of Housing and Urban Development to expand and improve the urban homesteading program, and to direct all agencies to assure that federally funded projects are compatible with physical, cultural, and social character of communities.
13. Improved Environmental and Health Effects Research: Proposals to direct EPA to meet with industry and develop joint government-industry research efforts; and to instruct CEQ to lead an interagency task force to review environmental monitoring and data needs.
14. Improving Government Coordination: A series of proposals to develop a means to bring together single-purpose federal environmental and other planning programs under a comprehensive policy and to give local authorities more control over federal actions which affect the quality of life; to instruct the Secretary of Housing and Urban Development to lead an effort to support areawide support changing funding of transportation programs in urban areas to provide cities with flexible choices among various modes of transportation; and to submit legislation to combine EPA's grant programs into a comprehensive program.

In addition to the proposals listed above, the draft Message includes brief statements on a number of actions which you have already taken or on which the Administration has an established position, such as the tanker initiative, the Clean Air Act Amendments, expansion of the National Park Service budget, stripmining legislation, and the water resources policy review.

WATSON COMMENT: The DOT Secretary and not the HUD Secretary should lead the effort on transportation.

8. Barrier Islands: A proposal to direct the Secretary of the Interior to develop recommendations for appropriate federal action to protect barrier islands from unwise development.
9. Environmental Review Laws: A proposal to instruct CEQ to study federal environmental review requirements and recommend measures to clarify and integrate them.
10. Alaskan Heritage: Proposed statements in general support for moving ahead with designation of parks, wildlife refuges, forests, and scenic rivers in Alaska; a promise to develop detailed recommendations in time for Congressional hearings.
11. Urban Environment: Proposals to direct the Secretary of Housing and Urban Development to expand and improve the urban homesteading program, and to direct all agencies to assure that federally funded projects are compatible with physical, cultural, and social character of communities.
12. Improved Environmental and Health Effects Research: Proposals to direct EPA to meet with industry and develop joint government-industry research efforts; and to instruct CEQ to lead an interagency task force to review environmental monitoring and data needs.
13. Improving Government Coordination: Commitments to support legislation to bring together single-purpose federal environmental and other planning programs under a comprehensive policy and to give local authorities more control over federal actions which affect the quality of life; to support changing funding of transportation programs in urban areas to provide cities with flexible choices among various modes of transportation; and to submit legislation to combine EPA's grant programs into a comprehensive program.

In addition to the proposals listed above, the draft Message includes brief statements on a number of actions which you have already taken or on which the Administration has an established position, such as the tanker initiative, the Clean Air Act Amendments, expansion of the National Park Service budget, stripmining legislation, water resources policy review, and the review of ERDA's radioactive waste management program.

Attachments



EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
722 JACKSON PLACE, N. W.  
WASHINGTON, D. C. 20006

April 22, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Charles Warren C.W.  
Gus Speth  
Marion Edey

SUBJECT: Environmental Message

The purpose of this memorandum is to inform you of the items that we recommend to you for inclusion in the proposed Environmental Message and to seek your approval of a number of major proposals. All components of the proposed Message have been reviewed by all relevant agencies and, with the exception of three issues, have uniform agency support.

We believe that the proposed Message is comprehensive, that it reflects the philosophy toward environmental quality you outlined during the campaign, and that it will be well-received by the Congress and the American people. No doubt a number of the proposals we are recommending will draw fire from special interest groups. We feel confident, however, that most people will view the Message as sound and responsible.

We believe that your environmental constituency extends well beyond those interested in the traditional categories of pollution control, parks, wildlife, and wilderness. Thus, in formulating the proposed Message we have included proposals on the health related aspects of pollution, including pollution of the workplace, on the urban environment, with emphasis on neighborhood conservation, on improving the effectiveness and efficiency of environmental planning and management, and on the environmental aspects of natural resource and energy development.

As of the date of this memorandum, the draft Message itself is being edited by your speechwriting staff, with assistance from Domestic Council and CEQ staffs. We expect that draft to be ready for your review by Friday, April 29.

A discussion of the content of the proposed Message follows in three categories: major proposals on which agencies agree; major proposals on which agencies disagree; other proposals on which agencies agree.

MAJOR PROPOSALS ON WHICH AGENCIES AGREE

1. Wilderness and Wild and Scenic Rivers: A proposal to submit to Congress five new wilderness areas, to propose enlargement of five others submitted by prior Administrations, to give early attention to three others, to add segments of seven rivers to the Wild and Scenic Rivers System, and to designate segments of 20 others for study as potential additions to the system.

We would like to begin work immediately with Frank Moore and Jack Watson to discuss each proposal with appropriate Congressmen and Governors. If problems should arise which we cannot resolve in the course of these discussions we would seek further guidance from you on specific proposals. Do you approve of this procedure?

Approve

Disapprove

Other

2. National Heritage Trust: A proposal to direct the Secretary of Interior, in consultation with appropriate state and federal officials, to identify outstanding natural and historic areas and develop programs to protect them. These programs would include: long range planning, better interagency coordination, aid to the states, and government acquisition of the most significant and most endangered areas. The Secretary is directed to report his recommendations to you in four months.

Approve

Disapprove

Other

3. Endangered Species: A proposal to direct federal agencies to complete in the shortest possible time their statutorily required responsibility to identify critical endangered species habitat. Early identification of such habitat will introduce a measure of stability into federal project planning because information on endangered species will be available at the outset. Your support of the Endangered Species Act would be in clear contrast with the low priority status given endangered species by the prior Administration.

Approve

Disapprove

Other

4. Off-road Vehicles: This proposal has been the subject of considerable misunderstanding. We are not proposing to ban ORV's from the public lands. We are proposing two amendments to the existing executive order. The first amendment would clarify the agencies' discretionary authority under the existing order to close portions of the public lands temporarily, pending study as to whether they should be permanently designated as "open" or "closed". The second amendment would add a special provision to the executive

order that requires closure of ORV use areas if an agency head makes a determination that significant environmental damage to the public resource is occurring or will occur.

Secretaries Andrus and Berglund, whose agencies are most affected by the Executive Order, support these amendments. They are aimed at correcting serious problems on portions of the public lands that are suffering severe damage from overuse by ORV's.

Approve

Disapprove

Other

5. Mining Reform: A proposal to instruct the Secretary of Interior to develop new legislation replacing the antiquated "finders-keepers" system of the Mining Law of 1872 with a discretionary leasing system for hardrock minerals (e.g., gold, silver, iron, copper, lead, etc.). Coal, oil, gas, and phosphates, for example, are already developed under a leasing system. Secretary Andrus supports this proposal.

Approve

Disapprove

Other

6. Coal Leasing: A proposal to direct Interior to implement an affirmative program to manage federal coal lands in a manner consistent with environmental protection. This would involve determining which lands are appropriate to lease, completing land use plans before deciding to offer specific tracts for sale, and not leasing tracts where environmental impacts would be unacceptable or where the federal government would not receive fair market value. A related proposal would direct the Secretary to carefully evaluate existing leases and take necessary steps to deal with non-producing and environmentally unsatisfactory leases.

Approve

Disapprove

Other

7. Wetlands Executive Order: This executive order would direct federal agencies to refrain from supporting construction in wetlands unless no practicable alternative exists. Such an order would be an important element of a comprehensive wetlands protection program. The draft Message also includes related statements of support for the Corps of Engineers permit program regulating dredging and filling wetlands (an issue you decided earlier this month) and for legislation to increase the price of the "duck" stamp to provide additional revenue for wetlands acquisition.

Approve

Disapprove

Other



8. Floodplain Management Executive Order: This executive order would direct federal agencies to refrain from supporting development in floodplains unless no practicable alternative exists. This proposal could be a significant feature of your program to re-orient water resources policy. It would reinforce current federal policy, now honored too often in the breach, by preventing federal programs from subsidizing unwise floodplain development. Such development often becomes part of the justification for a dam or, if a flood occurs, becomes the basis for federal disaster relief funds to compensate for losses.

Approve

Disapprove

Other

9. Forest Management Review: This proposal would direct the Secretary of Agriculture to undertake a comprehensive review of cooperative forestry programs with a view toward improving organization for and coordination of federal assistance, emphasizing multiple use management and environmental protection, and recommending new initiatives if needed.

Approve

Disapprove

Other

10. Toxic Chemicals: We are proposing that the Message include support of vigorous implementation of the Toxic Substances Control Act, of giving high priority to developing 1983 standards for industry under the Federal Water Pollution Control Act which will provide control of toxics, of changing the FWPCA to improve EPA's ability to control toxic discharges, and developing complementary regulations under the Safe Drinking Water Act. The Message would also direct CEQ to head an interagency effort to design a coherent strategy to improve coordination and information flow among the seven different agencies currently implementing fifteen different statutes regulating toxic chemicals.

Approve

Disapprove

Other

11. Health Effects of Energy Technologies: This proposal would direct the Administrators of ERDA and EPA, and the Secretary of HEW to undertake a continuing review to identify priority health effects issues and research needs for advanced energy technologies. Also proposed is a directive to the Administrators of ERDA and EPA to develop procedures within one year toward establishing environmental protection standards for new energy technologies.

Approve

Disapprove

Other

12. Workplace Environment: In the past, the federal response to occupational health problems has been slow and inefficient, e.g., OSHA has only promulgated four sets of complete occupational health standards in the past seven years. We are proposing that you pledge to give the development of such standards a high priority. Other proposals in this area include support of strengthening amendments to the Federal Coal Mine Health and Safety Act and the Federal Metal and Non-metallic Mine Safety Act, and a pledge to examine the full-range of reforms that might be undertaken, at appropriate levels of government, to assure adequate compensation for occupationally induced diseases.

Approve

Disapprove

Other

13. Water Quality Enforcement: Looking toward the forthcoming Congressional review of the Federal Water Pollution Control Act, the Message includes proposed statements supporting the imposition of compliance fees on industries not abating pollution on schedule. This proposal would be similar to positions the Administration has taken with respect to the Clean Air Act.

Approve

Disapprove

Other

14. Water Quality Management: This proposal would involve a strong statement in support for completing state and areawide water quality management plans and assure that local planning agencies have the authority to implement their plans. This program is aimed at the difficult problem of controlling pollution from "non-point" sources such as agricultural runoff.

15. Pest Management: Under current law EPA regulates 40,000 formulated pesticide products. This proposal would direct EPA to work with the Congress to change the focus of EPA's regulatory program to the 1,400 basic active chemical ingredients used in pesticides, thereby permitting speedier and more-efficient registration of desirable products and revocation of the registration of products which pose unwarranted risks. Another proposal is to instruct CEQ to recommend to you appropriate federal measures to encourage integrated pest management. CEQ has been working with the Department of Agriculture and EPA on a major assessment of integrated pest management, which will be completed in the near future.

Approve

Disapprove

Other

16. World Population Growth: This is a proposed statement that expresses concern about rapid growth of the world's population and indicates that the U.S. is prepared to be responsive to requests for assistance on population and health care problems. Many people believe that population growth is the world's number one environmental problem. This would be the first time in recent years that an American President has dealt with the issue publicly.

Approve

Disapprove

Other

17. Whales: This proposal would direct the Secretary of Commerce to prohibit commercial whaling with our 200-mile fishing zone, to maintain U.S. support for a 10-year moratorium on whaling, and to report to you in 60-days on the effectiveness of the whale conservation program of the International Whaling Commission.

Approve

Disapprove

Other

#### MAJOR PROPOSALS ON WHICH AGENCIES DISAGREE

1. Resource Conservation Study: This is the other item in the proposed Message that has been the subject of considerable misunderstanding. It is not a proposal for a bottle tax. It is simply a proposal to direct the Resource Conservation Committee established by the Resource Conservation and Recovery Act of 1976 to accelerate by one year the preparation and submission of a study on economic incentives for solid waste disposal which is already required by the Act. The proposal would indicate your commitment to exploring innovative economic techniques for inducing greater recycling and less use of virgin resources.

All agencies agree, except the Department of Commerce. The Department of Commerce, along with the bottling, container, and packaging industries, has expressed opposition to accelerating the study. They believe we should stick to the original two-year deadline.

Approve

Disapprove

Other

2. NEPA Executive Order: A proposal to issue an executive order directing CEQ to issue regulations in order to reform and improve the environmental impact statement review process of the National Environmental Policy Act and to achieve better implementation of that Act's underlying policies. See issue paper at Tab A.

3. Non-game Wildlife: A proposal to submit legislation to provide up to \$210 million over the next five years to assist States develop improved programs for the conservation of non-game wildlife species. See issue paper at Tab B.

OTHER PROPOSALS ON WHICH AGENCIES AGREE

1. National Trails: A proposal to designate three National Scenic Trails; to submit to Congress reports on two other trails; and to submit legislation to add a new category to the system: Historic Trails (e.g., the Lewis and Clark Trail).
2. Cross Florida Barge Canal: A proposal to submit legislation to deauthorize the Cross Florida Barge Canal, authorize study of the Oklawaha River as a Wild and Scenic River, and to extend the boundaries of the Ocala National Forest to further protect the river.
3. Exotic Species Executive Order: A proposal to issue an executive order restricting introduction of foreign plant and wildlife species into U.S. Exemptions are provided for pets and for desirable plants.
4. Wildlife Law Codification: A proposal to instruct CEQ, in consultation with other agencies and states, to recommend the best method to avoid overlapping and conflicting requirements. CEQ has just published a major study of wildlife law.
5. Marine Sanctuaries: A proposal to instruct the Secretary of Commerce to accelerate efforts to identify marine sanctuaries. Prior Administrations have given this program very low priority. Only two sanctuaries have been established so far.
6. Global Environment: A series of proposals to direct the State Department to review U.S. international environmental objectives and programs and report in 90 days; to instruct CEQ and State Department, working with other agencies to study world environmental conditions as a basis for reviewing U.S. policy; to direct the Secretary of State, AID, and other appropriate agencies to consider environment in developing plans and projects; and to instruct AID to pursue environmental and natural resource assistance programs.
7. Protecting the Antarctic: A proposal to submit legislation implementing the Treaty ratified several years ago with the purpose of protecting the Antarctic environment.

8. Barrier Islands: A proposal to direct the Secretary of Interior to develop recommendations for appropriate federal action to protect barrier islands from unwise development.
9. Land and Water Conservation Fund: A proposal to direct the Secretary of Interior to encourage states to consider property acquisition along waterfronts as an element in the Land and Water Conservation Fund in order to capture the benefits of the Federal water pollution control program.
10. Environmental Review Laws: A proposal to instruct CEQ to study federal environmental review requirements and recommend measures to clarify and integrate them.
11. Alaskan Heritage: Proposed statements in general support for moving ahead with designation of parks, wildlife refuges, forests, and scenic rivers in Alaska; a promise to develop detailed recommendations in time for Congressional hearings.
12. Urban Environment: Proposals to direct the Secretary of Housing and Urban Development to expand and improve the urban homesteading program, and to direct all agencies to assure that federally funded projects are compatible with physical, cultural, and social character of communities.
13. Improved Environmental and Health Effects Research: Proposals to direct EPA to meet with industry and develop joint government-industry research efforts; and to instruct CEQ to lead an interagency task force to review environmental monitoring and data needs.
14. Improving Government Coordination: A series of proposals to develop a means to bring together single-purpose federal environmental and other planning programs under a comprehensive policy and to give local authorities more control over federal actions which affect the quality of life; to instruct the Secretary of Housing and Urban Development to lead an effort to support areawide support changing funding of transportation programs in urban areas to provide cities with flexible choices among various modes of transportation; and to submit legislation to combine EPA's grant programs into a comprehensive program.

In addition to the proposals listed above, the draft Message includes brief statements on a number of actions which you have already taken or on which the Administration has an established position, such as the tanker initiative, the Clean Air Act Amendments, expansion of the National Park Service budget, stripmining legislation, and the water resources policy review.

Mr. President, we stand ready to respond to your questions about any aspect of this memorandum. If you approve of our proposal to go ahead with an Environmental Message, we recommend that you schedule its release for the week of May 2, preferably Wednesday, May 4.

Decision: Schedule release of Environmental Message for Wednesday, May 4, 1977.

Approve

Disapprove

Other

Attachments

EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
722 JACKSON PLACE, N. W.  
WASHINGTON, D. C. 20006

April 22, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Charles Warren *CW*  
Gus Speth  
Marion Edey

SUBJECT: Environmental Message

The purpose of this memorandum is to inform you of the items that we recommend to you for inclusion in the proposed Environmental Message and to seek your approval of a number of major proposals. All components of the proposed Message have been reviewed by all relevant agencies and, with the exception of three issues, have uniform agency support.

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As of the date of this memorandum, the draft Message itself is being edited by your speechwriting staff, with assistance from Domestic Council and CEQ staffs. We expect that draft to be ready for your review by Friday, April 29.

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MAJOR PROPOSALS ON WHICH AGENCIES AGREE

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We would like to begin work immediately with Frank Moore and Jack Watson to discuss each proposal with appropriate Congressmen and Governors. If problems should arise which we cannot resolve in the course of these discussions we would seek further guidance from you on specific proposals. Do you approve of this procedure?

Approve

Disapprove

Other

2. National Heritage Trust: A proposal to direct the Secretary of Interior, in consultation with appropriate state and federal officials, to identify outstanding natural and historic areas and develop programs to protect them. These programs would include: long range planning, better interagency coordination, aid to the states, and government acquisition of the most significant and most endangered areas. The Secretary is directed to report his recommendations to you in four months.

Approve

Disapprove

Other

3. Endangered Species: A proposal to direct federal agencies to complete in the shortest possible time their statutorily required responsibility to identify critical endangered species habitat. Early identification of such habitat will introduce a measure of stability into federal project planning because information on endangered species will be available at the outset. Your support of the Endangered Species Act would be in clear contrast with the low priority status given endangered species by the prior Administration.

Approve

Disapprove

Other

4. Off-road Vehicles: This proposal has been the subject of considerable misunderstanding. We are not proposing to ban ORV's from the public lands. We are proposing two amendments to the existing executive order. The first amendment would clarify the agencies' discretionary authority under the existing order to close portions of the public lands temporarily, pending study as to whether they should be permanently designated as "open" or "closed". The second amendment would add a special provision to the executive



order that requires closure of ORV use areas if an agency head makes a determination that significant environmental damage to the public resource is occurring or will occur.

Secretaries Andrus and Berglund, whose agencies are most affected by the Executive Order, support these amendments. They are aimed at correcting serious problems on portions of the public lands that are suffering severe damage from overuse by ORV's.

Approve

Disapprove

Other

5. Mining Reform: A proposal to instruct the Secretary of Interior to develop new legislation replacing the antiquated "finders-keepers" system of the Mining Law of 1872 with a discretionary leasing system for hardrock minerals (e.g., gold, silver, iron, copper, lead, etc.). Coal, oil, gas, and phosphates, for example, are already developed under a leasing system. Secretary Andrus supports this proposal.

Approve

Disapprove

Other

6. Coal Leasing: A proposal to direct Interior to implement an affirmative program to manage federal coal lands in a manner consistent with environmental protection. This would involve determining which lands are appropriate to lease, completing land use plans before deciding to offer specific tracts for sale, and not leasing tracts where environmental impacts would be unacceptable or where the federal government would not receive fair market value. A related proposal would direct the Secretary to carefully evaluate existing leases and take necessary steps to deal with non-producing and environmentally unsatisfactory leases.

Approve

Disapprove

Other

7. Wetlands Executive Order: This executive order would direct federal agencies to refrain from supporting construction in wetlands unless no practicable alternative exists. Such an order would be an important element of a comprehensive wetlands protection program. The draft Message also includes related statements of support for the Corps of Engineers permit program regulating dredging and filling wetlands (an issue you decided earlier this month) and for legislation to increase the price of the "duck" stamp to provide additional revenue for wetlands acquisition.

Approve

Disapprove

Other

8. Floodplain Management Executive Order: This executive order would direct federal agencies to refrain from supporting development in floodplains unless no practicable alternative exists. This proposal could be a significant feature of your program to re-orient water resources policy. It would reinforce current federal policy, now honored too often in the breach, by preventing federal programs from subsidizing unwise floodplain development. Such development often becomes part of the justification for a dam or, if a flood occurs, becomes the basis for federal disaster relief funds to compensate for losses.

Approve

Disapprove

Other

9. Forest Management Review: This proposal would direct the Secretary of Agriculture to undertake a comprehensive review of cooperative forestry programs with a view toward improving organization for and coordination of federal assistance, emphasizing multiple use management and environmental protection, and recommending new initiatives if needed.

Approve

Disapprove

Other

10. Toxic Chemicals: We are proposing that the Message include support of vigorous implementation of the Toxic Substances Control Act, of giving high priority to developing 1983 standards for industry under the Federal Water Pollution Control Act which will provide control of toxics, of changing the FWPCA to improve EPA's ability to control toxic discharges, and developing complementary regulations under the Safe Drinking Water Act. The Message would also direct CEQ to head an interagency effort to design a coherent strategy to improve coordination and information flow among the seven different agencies currently implementing fifteen different statutes regulating toxic chemicals.

Approve

Disapprove

Other

11. Health Effects of Energy Technologies: This proposal would direct the Administrators of ERDA and EPA, and the Secretary of HEW to undertake a continuing review to identify priority health effects issues and research needs for advanced energy technologies. Also proposed is a directive to the Administrators of ERDA and EPA to develop procedures within one year toward establishing environmental protection standards for new energy technologies.

Approve

Disapprove

Other

12. Workplace Environment: In the past, the federal response to occupational health problems has been slow and inefficient, e.g., OSHA has only promulgated four sets of complete occupational health standards in the past seven years. We are proposing that you pledge to give the development of such standards a high priority. Other proposals in this area include support of strengthening amendments to the Federal Coal Mine Health and Safety Act and the Federal Metal and Non-metallic Mine Safety Act, and a pledge to examine the full-range of reforms that might be undertaken, at appropriate levels of government, to assure adequate compensation for occupationally induced diseases.

Approve

Disapprove

Other

13. Water Quality Enforcement: Looking toward the forthcoming Congressional review of the Federal Water Pollution Control Act, the Message includes proposed statements supporting the imposition of compliance fees on industries not abating pollution on schedule. This proposal would be similar to positions the Administration has taken with respect to the Clean Air Act.

Approve

Disapprove

Other

14. Water Quality Management: This proposal would involve a strong statement in support for completing state and areawide water quality management plans and assure that local planning agencies have the authority to implement their plans. This program is aimed at the difficult problem of controlling pollution from "non-point" sources such as agricultural runoff.

15. Pest Management: Under current law EPA regulates 40,000 formulated pesticide products. This proposal would direct EPA to work with the Congress to change the focus of EPA's regulatory program to the 1,400 basic active chemical ingredients used in pesticides, thereby permitting speedier and more-efficient registration of desirable products and revocation of the registration of products which pose unwarranted risks. Another proposal is to instruct CEQ to recommend to you appropriate federal measures to encourage integrated pest management. CEQ has been working with the Department of Agriculture and EPA on a major assessment of integrated pest management, which will be completed in the near future.

Approve

Disapprove

Other

16. World Population Growth: This is a proposed statement that expresses concern about rapid growth of the world's population and indicates that the U.S. is prepared to be responsive to requests for assistance on population and health care problems. Many people believe that population growth is the world's number one environmental problem. This would be the first time in recent years that an American President has dealt with the issue publicly.

Approve

Disapprove

Other

17. Whales: This proposal would direct the Secretary of Commerce to prohibit commercial whaling with our 200-mile fishing zone, to maintain U.S. support for a 10-year moratorium on whaling, and to report to you in 60-days on the effectiveness of the whale conservation program of the International Whaling Commission.

Approve

Disapprove

Other

#### MAJOR PROPOSALS ON WHICH AGENCIES DISAGREE

1. Resource Conservation Study: This is the other item in the proposed Message that has been the subject of considerable misunderstanding. It is not a proposal for a bottle tax. It is simply a proposal to direct the Resource Conservation Committee established by the Resource Conservation and Recovery Act of 1976 to accelerate by one year the preparation and submission of a study on economic incentives for solid waste disposal which is already required by the Act. The proposal would indicate your commitment to exploring innovative economic techniques for inducing greater recycling and less use of virgin resources.

All agencies agree, except the Department of Commerce. The Department of Commerce, along with the bottling, container, and packaging industries, has expressed opposition to accelerating the study. They believe we should stick to the original two-year deadline.

Approve

Disapprove

Other

2. NEPA Executive Order: A proposal to issue an executive order directing CEQ to issue regulations in order to reform and improve the environmental impact statement review process of the National Environmental Policy Act and to achieve better implementation of that Act's underlying policies. See issue paper at Tab A.

3. Non-game Wildlife: A proposal to submit legislation to provide up to \$210 million over the next five years to assist States develop improved programs for the conservation of non-game wildlife species. See issue paper at Tab B.

OTHER PROPOSALS ON WHICH AGENCIES AGREE

1. National Trails: A proposal to designate three National Scenic Trails; to submit to Congress reports on two other trails; and to submit legislation to add a new category to the system: Historic Trails (e.g., the Lewis and Clark Trail).
2. Cross Florida Barge Canal: A proposal to submit legislation to deauthorize the Cross Florida Barge Canal, authorize study of the Oklawaha River as a Wild and Scenic River, and to extend the boundaries of the Ocala National Forest to further protect the river.
3. Exotic Species Executive Order: A proposal to issue an executive order restricting introduction of foreign plant and wildlife species into U.S. Exemptions are provided for pets and for desirable plants.
4. Wildlife Law Codification: A proposal to instruct CEQ, in consultation with other agencies and states, to recommend the best method to avoid overlapping and conflicting requirements. CEQ has just published a major study of wildlife law.
5. Marine Sanctuaries: A proposal to instruct the Secretary of Commerce to accelerate efforts to identify marine sanctuaries. Prior Administrations have given this program very low priority. Only two sanctuaries have been established so far.
6. Global Environment: A series of proposals to direct the State Department to review U.S. international environmental objectives and programs and report in 90 days; to instruct CEQ and State Department, working with other agencies to study world environmental conditions as a basis for reviewing U.S. policy; to direct the Secretary of State, AID, and other appropriate agencies to consider environment in developing plans and projects; and to instruct AID to pursue environmental and natural resource assistance programs.
7. Protecting the Antarctic: A proposal to submit legislation implementing the Treaty ratified several years ago with the purpose of protecting the Antarctic environment.

8. Barrier Islands: A proposal to direct the Secretary of Interior to develop recommendations for appropriate federal action to protect barrier islands from unwise development.
9. Land and Water Conservation Fund: A proposal to direct the Secretary of Interior to encourage states to consider property acquisition along waterfronts as an element in the Land and Water Conservation Fund in order to capture the benefits of the Federal water pollution control program.
10. Environmental Review Laws: A proposal to instruct CEQ to study federal environmental review requirements and recommend measures to clarify and integrate them.
11. Alaskan Heritage: Proposed statements in general support for moving ahead with designation of parks, wildlife refuges, forests, and scenic rivers in Alaska; a promise to develop detailed recommendations in time for Congressional hearings.
12. Urban Environment: Proposals to direct the Secretary of Housing and Urban Development to expand and improve the urban homesteading program, and to direct all agencies to assure that federally funded projects are compatible with physical, cultural, and social character of communities.
13. Improved Environmental and Health Effects Research: Proposals to direct EPA to meet with industry and develop joint government-industry research efforts; and to instruct CEQ to lead an interagency task force to review environmental monitoring and data needs.
14. Improving Government Coordination: A series of proposals to develop a means to bring together single-purpose federal environmental and other planning programs under a comprehensive policy and to give local authorities more control over federal actions which affect the quality of life; to instruct the Secretary of Housing and Urban Development to lead an effort to support areawide support changing funding of transportation programs in urban areas to provide cities with flexible choices among various modes of transportation; and to submit legislation to combine EPA's grant programs into a comprehensive program.

In addition to the proposals listed above, the draft Message includes brief statements on a number of actions which you have already taken or on which the Administration has an established position, such as the tanker initiative, the Clean Air Act Amendments, expansion of the National Park Service budget, stripmining legislation, and the water resources policy review.

Mr. President, we stand ready to respond to your questions about any aspect of this memorandum. If you approve of our proposal to go ahead with an Environmental Message, we recommend that you schedule its release for the week of May 2, preferably Wednesday, May 4.

Decision: Schedule release of Environmental Message for Wednesday, May 4, 1977.

Approve

Disapprove

Other

Attachments

Issue Paper  
Environmental Message  
Environmental Impact Statement Reform

1. Issues

The Council on Environmental Quality recommends reforming the environmental impact statement (EIS) process by deemphasizing paper work and emphasizing the substance of agency decisions. The disputed issues arise over the means to be used.

Since passage of the National Environmental Policy Act (NEPA) and its implementing Executive Order in 1970, CEQ has guided federal agencies in the environmental impact statement process by means of nonmandatory "guidelines" which only address NEPA's impact statement procedures and not the Act's other provisions, including the environmental policy provisions. The issues are (1) whether CEQ, in its effort to reduce paperwork and emphasize the underlying substantive policies of NEPA should elevate the status of its guidelines to regulations, and (2) whether CEQ should be authorized to issue regulations or guidelines which apply the policy provisions of NEPA to the substance of agency decisions.

2. Background

NEPA and the impact statement process have been of tremendous benefit in informing the public and in making agency programs more responsive to environmental concerns. Nevertheless, an increasing preoccupation with paperwork and procedure in the EIS process has tended to obscure the Act's underlying policies.

The authority given CEQ under the current Executive Order to promulgate guidelines is limited to the impact statement provision of NEPA (Sec. 102(2)(C)). This has resulted in guidelines which do not directly apply the environmental policy statements in NEPA. Instead, the current guidelines focus only on the "action forcing" procedures, such as the impact statement requirement, which are intended to force the agencies to take the substantive NEPA policies into consideration in the decisionmaking process. By concentrating guidelines on the EIS, production of this document often has been perceived as an end in itself rather than as a means to improved decision-making.

As a result, business and labor complain of the bureaucratic paperwork requirements. Environmentalists fear that the NEPA EIS process which they value highly is being given a bad name by the concentration of paperwork.



Additionally, the CEQ guidelines have not succeeded in preventing inconsistent court rulings. This has led to confusion and uncertainty regarding NEPA requirements and a resulting tendency to resolve uncertainties in favor of greater impact statement length.

3. Discussion - Issue #1. Guidelines or Regulations as to Agency Procedures?

CEQ and OMB agree that regulations governing NEPA procedures which would be binding on other agencies would help to:

- a. Reduce paperwork. Although CEQ's advisory guidelines are highly regarded, they have not been successful in reducing EIS paperwork. The Senate Interior Committee Oversight Report and the staff report of the Federal Paperwork Commission have both recognized the need for stronger direction from CEQ.
- b. Provide clearer guidance to courts, thus avoiding conflicting and misguided court decisions. Courts are more likely to follow regulations and not insist on unnecessary paperwork. People doing business with the federal government and the public generally would benefit from a uniform interpretation of NEPA requirements throughout the federal government.

CEQ and OMB also agree that regulations to be issued by CEQ should be circulated to and reviewed by all units of the Executive Office of the President before they are proposed.

In addition, you should be aware that, while agencies within the Executive Office of the President have on several occasions been given statutory authority to issue regulations and CEQ's authority to issue regulations in this case has been specifically affirmed by the Justice Department, the actual issuance of regulations by an EOP office has been rare. While this is a relevant consideration, neither CEQ nor OMB feels it should be dispositive.

Arguments against CEQ issuing regulations are:

- a. Guideline revisions aimed at paperwork reduction might succeed and should be tried again.
- b. It is inappropriate that CEQ have regulatory authority over other agencies' NEPA practices.
- c. Regulations might lead to more court-occasioned delays in that there would be more requirements to violate.

- d. Different agencies should have discretion to interpret NEPA differently since agency programs and missions differ considerably. This will also assist agencies in meshing NEPA's requirements with other procedures which the particular agency has. CEQ might involve itself in areas where expertise is needed which it lacks.

Discussion - Issue #2. Procedures only or Procedures and Substance?

Those using the term "substance" or "substantive requirements" of NEPA mean the national environmental policies set out principally in Sec. 101 of the Act. Many Federal agencies, CEQ, and most Courts of Appeal view these statements of national environmental policy as substantive goals which the Congress intended all Federal agencies to pursue using the procedural means set out in Sec. 102(2). OMB, most Federal agencies, and some Courts do not share this view. They believe that the statements of national environmental policy are too vague to be applied as substantive objectives for all Federal agencies under all circumstances.

CEQ believes that it should be authorized to issue regulations to implement all provisions of NEPA -- not only the procedural provisions. The authority to develop broader regulations is needed to:

- a. Prevent an undue emphasis on paperwork and procedure by focusing on other provisions of NEPA and not merely the EIS procedure. The EIS process is a means of implementing the substantive requirements of the Act and not an end in itself.
- b. Achieve a greater measure of environmental protection by ensuring that agencies do not ignore the sections of NEPA other than the EIS provisions.
- c. Ensure that the underlying policies of NEPA are recognized and achieved. 1/

1/ Ways in which regulations might be formulated to carry out NEPA's substantive requirements are the models used by the States of California and New York with their "little NEPAs" patterned on the Federal law. They state that when an environmental impact statement reveals serious environmental problems, the decision makers must in the ordinary course of events choose the less environmentally harmful alternative course of action or choose mitigation measures that will minimize the environmental harm (unless there are specific economic or social factors which override the environmental factors).

OMB and most other agencies oppose CEQ regulations extending beyond the NEPA procedural requirements because:

- a. CEQ would be authorized to impose specific environmental requirements, derived from vague and general statutory language, on the substantive programs and policies of other agencies. This could result in an undue shift of power to CEQ.
- b. CEQ regulations in this area could conflict with the more specific environmental standards and regulations appropriately established under statutes enacted for that purpose (e.g., the Clean Air Act, the Water Pollution Control Act).

4. Decision

1. Authorize CEQ to replace its present NEPA guidelines with regulations which cover both procedures and substance. (This is the CEQ preferred position.) 2/ ☐
2. Authorize CEQ to replace its present NEPA guidelines with regulations which cover procedures (Section 102(2) of NEPA) only. Direct CEQ to prepare an Executive order for the President to consider which would direct agencies to take steps to better implement the national environmental policy stated in NEPA. (This is the position preferred by OMB on the grounds that it is more appropriate for the President to direct agencies' substantive compliance with NEPA than for CEQ to do so. While not the CEQ preferred position, it is one acceptable to CEQ.) ☐
3. Authorize CEQ to replace its present NEPA guidelines with regulations which cover only procedures. No action on substance. ☐
4. Revise CEQ NEPA guidelines with respect to procedures (impact statements and other procedures of Sec. 102(2)). ☐

2/ The agencies which oppose CEQ's proposal include ACDA, Agriculture, CAB, Eximbank, ERDA, FEA, HUD, Interior, NRC, State, Transportation, and TVA. The agencies which do not oppose CEQ's proposal include CSC, EPA, Justice, NASA, NSC, Postal Service, SBA, Treasury, and VA.

Issue Paper  
Environmental Message  
Nongame Wildlife

Statement of Issue

Should there be a new initiative for the management of non-game wildlife?

Background

States, as trustees for wildlife unless specifically preempted by the Federal Government, manage wildlife primarily for sport or game management purposes. Most wildlife is non-game, e.g., of the 800 species of birds, only 60 are game species. Because of the concentration on game species, the conservation needs of the vast majority of wildlife species most seen and appreciated by the American public are not addressed.

Part of the existing Federal-Aid Grants to States for fish and wildlife programs (which totaled \$114M in 78) can be used for the protection of all terrestrial wildlife, but this part is primarily used by States for the benefit of game species. This is because (1) the Federal funds are derived from taxes on hunting and fishing equipment and (2) the sportsmen's groups have more influence at the State level than supporters of nongame wildlife management.

Thus, some believe there is need for a special Federal grant program to pay State costs of managing nongame species. Since 97 percent of Federal and 99 percent of State wildlife management funding is directed to game species, little is known about the status or conservation needs of the other 99 percent of vertebrate wildlife species. No complete analysis has been done to indicate to what extent a nongame wildlife management problem exists, what would be the budgetary goals of a nongame program, or what the ultimate costs would be. States now put \$325M/year into wildlife management of which \$260M are from State revenues.

Alternatives

1. Propose a nongame wildlife bill in the Environmental Message which would establish grants up to \$50M per year (\$210M over 5 years) to States for comprehensive wildlife planning and for subsequent implementation of the nongame portion of such plans (Council on Environmental Quality proposal).
2. Direct the Secretary of the Interior in the Environmental Message to study the problem and develop alternatives for managing nongame species within 120 days of the Environmental Message as part of the design for the National Heritage Trust.

3. Direct the Secretary of the Interior in the Environmental Message to encourage States to apply existing Federal-Aid funds (\$114M in fiscal 1978) to the management of all species of wildlife.

#### Analysis

Alternative #1. Propose a nongame wildlife bill in the Environmental Message which is complimentary to the existing Federal-State programs and would establish grants up to \$50M per year (210M over 5 years) to States for nongame species planning and for subsequent implementation of such plans (Council on Environmental Quality proposal).

#### Pros

- The bill can provide the comprehensive planning for wildlife which does not now exist in state programs and can serve as a model for reform of existing wildlife funding programs.
- The bill provides the funding needed to conserve and manage a much broader range of wildlife than present programs address.
- In his campaign, the President stated his support for establishing a Federal-State nongame wildlife program.
- There is strong outside support from States and the conservation community. There is no known outside opposition.

#### Cons

- There has not been comprehensive analysis of the goals and outputs expected from this program, nor is there a complete analysis of funds needed to attain program goals.
- A new categorical grant would be established for nongame wildlife, in addition to existing categoricals for fish, anadromous fish, game wildlife, and endangered species.
- Some Federal-Aid funds may already be used to protect nongame wildlife and Congress in 1955 amended the Federal-Aid laws in order to encourage States to apply some Federal-Aid funds toward the benefit of all wildlife.

- Action may be premature in light of the National Heritage Trust proposal, to be developed within 120 days after the Environmental Message, which will consider consolidating existing grants in the natural, historic, and flora and fauna area.

Alternative #2. Direct the Secretary of the Interior in the Environmental Message to study the problem and develop alternatives for managing nongame species within 120 days of the Environmental Message as part of the design for the National Heritage Trust.

Pros

- Identification of the need, objectives to be served, and consideration of a new categorical wildlife grant could be merged with an analysis and consolidation of other habitat acquisition programs, and the various planning requirements and grants in the wildlife field as part of the reorganization and studies for the National Heritage Trust.
- Helps avoid precipitous action that may result from making proposals without problem analysis, definition of objectives, or budgetary analysis.

Cons

- Delay may disappoint advocates of an immediate nongame program.

Alternative #3. Direct the Secretary of the Interior in the Environmental Message to encourage States to apply existing Federal-Aid funds (\$114M in fiscal 1978) to the management of all species of wildlife.

Pros

- This approach provides Presidential visibility on the nongame topic.
- A new categorical grant would not be necessary and additional costs would be avoided.

Cons

- May disappoint advocates of a new nongame program.

- States strongly oppose this approach, believing that since Federal-Aid funds are raised by excise taxes on hunting and fishing equipment, funds should be spent primarily for purposes of game management.

Council on Environmental Quality Proposal: Alternative #1  
The proposal has been cleared by all agencies but OMB.

Recommendations: CEQ recommends Alternative #1, announcement of the new \$50M/year grant program now. OMB recommends Alternative #3 as first choice. Alternative #2 as second choice.

Alternative #1

\_\_\_ Approve \_\_\_ Disapprove \_\_\_ Other

Alternative #2

\_\_\_ Approve \_\_\_ Disapprove \_\_\_ Other

Alternative #3

\_\_\_ Approve \_\_\_ Disapprove \_\_\_ Other

THE WHITE HOUSE  
WASHINGTON

29 April 1977

MEMORANDUM FOR THE PRESIDENT

FROM: RICK HUTCHESON

SUBJECT: Decision Memorandum on Proposed  
Environmental Message

Charles Warren's memo is attached. Comments from Eizenstat, Watson and Lance are interspersed throughout the memo at the appropriate point in the text. No other staff comments were received.

Griffin Smith of Jim Fallows' staff has been working with CEQ on the Message itself; so far, he has cut it in half, from 106 to 50 pages in length.

FALLOWS recommends that you further reduce the Message by:

1. eliminating subjects you have covered in other Messages (e.g., oil tankers, natural gas policy).

\_\_\_\_\_approve \_\_\_\_\_disapprove

2. restricting the Message to "traditionally environmental" subjects, to avoid diluting its impact. At present it contains many items (e.g., OSHA, neighborhood planning) which have been included mainly to attract the support of those constituencies.

\_\_\_\_\_approve restricting Message to traditionally  
environmental subjects

\_\_\_\_\_disapprove

Given the constraints on your time before the Summit, EIZENSTAT recommends sending the Message after the Summit. Warren recommends a May 4 release date.

\_\_\_\_\_before Summit if ready \_\_\_\_\_after Summit



GENERAL COMMENTS ON THE ATTACHED WARREN MEMORANDUM

1. WATSON. Warren's memo is excellent. We have only these suggestions:

a. Suggest that in explaining your environmental program you stress that the initiatives will save money by conserving precious resources

\_\_\_\_\_agree \_\_\_\_\_disagree

b. There is nothing in the program specifically to clean up the Potomac -- a promise President Johnson made and never kept. This initiative would have enormous importance to area residents. Could we earmark some existing funds?

\_\_\_\_\_yes \_\_\_\_\_no \_\_\_\_\_explore this idea

2. EIZENSTAT. CEQ has done a good job of laying out the issues for an environmental message. I have reviewed each of the items designated as "Major Proposals on which agencies agree" and concur in all of them. The political problems which arose from false alarms in the off-road vehicle and other issues are not present in the CEQ proposal.

3. LANCE. I generally support the content of the Environmental Message.

Regarding the Message's budgetary commitments. I generally support them, except for the proposed new categorical grant for State wildlife management. (See OMB attachment on budgetary impact of Message.)

Also, see OMB attachment on the statements in the draft Message which support new Federal regulation on environmental issues. Lance says, "I bring them to your attention in light of your general policy stance favoring reduction in the regulatory burden on our society and economy."

EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
722 JACKSON PLACE, N. W.  
WASHINGTON, D. C. 20006

April 22, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Charles Warren *CW*  
Gus Speth  
Marion Edey

SUBJECT: Environmental Message

The purpose of this memorandum is to inform you of the items that we recommend to you for inclusion in the proposed Environmental Message and to seek your approval of a number of major proposals. All components of the proposed Message have been reviewed by all relevant agencies and, with the exception of three issues, have uniform agency support.

We believe that the proposed Message is comprehensive, that it reflects the philosophy toward environmental quality you outlined during the campaign, and that it will be well-received by the Congress and the American people. No doubt a number of the proposals we are recommending will draw fire from special interest groups. We feel confident, however, that most people will view the Message as sound and responsible.

We believe that your environmental constituency extends well beyond those interested in the traditional categories of pollution control, parks, wildlife, and wilderness. Thus, in formulating the proposed Message we have included proposals on the health related aspects of pollution, including pollution of the workplace, on the urban environment, with emphasis on neighborhood conservation, on improving the effectiveness and efficiency of environmental planning and management, and on the environmental aspects of natural resource and energy development.

As of the date of this memorandum, the draft Message itself is being edited by your speechwriting staff, with assistance from Domestic Council and CEQ staffs. We expect that draft to be ready for your review by Friday, April 29.

A discussion of the content of the proposed Message follows in three categories: major proposals on which agencies agree; major proposals on which agencies disagree; other proposals on which agencies agree.

MAJOR PROPOSALS ON WHICH AGENCIES AGREE

1. Wilderness and Wild and Scenic Rivers: A proposal to submit to Congress five new wilderness areas, to propose enlargement of five others submitted by prior Administrations, to give early attention to three others, to add segments of seven rivers to the Wild and Scenic Rivers System, and to designate segments of 20 others for study as potential additions to the system.

We would like to begin work immediately with Frank Moore and Jack Watson to discuss each proposal with appropriate Congressmen and Governors. If problems should arise which we cannot resolve in the course of these discussions we would seek further guidance from you on specific proposals. Do you approve of this procedure?

Approve

Disapprove

Other

2. National Heritage Trust: A proposal to direct the Secretary of Interior, in consultation with appropriate state and federal officials, to identify outstanding natural and historic areas and develop programs to protect them. These programs would include: long range planning, better interagency coordination, aid to the states, and government acquisition of the most significant and most endangered areas. The Secretary is directed to report his recommendations to you in four months.

Approve

Disapprove

Other

3. Endangered Species: A proposal to direct federal agencies to complete in the shortest possible time their statutorily required responsibility to identify critical endangered species habitat. Early identification of such habitat will introduce a measure of stability into federal project planning because information on endangered species will be available at the outset. Your support of the Endangered Species Act would be in clear contrast with the low priority status given endangered species by the prior Administration.

Approve

Disapprove

Other

4. Off-road Vehicles: This proposal has been the subject of considerable misunderstanding. We are not proposing to ban ORV's from the public lands. We are proposing two amendments to the existing executive order. The first amendment would clarify the agencies' discretionary authority under the existing order to close portions of the public lands temporarily, pending study as to whether they should be permanently designated as "open" or "closed". The second amendment would add a special provision to the executive

order that requires closure of ORV use areas if an agency head makes a determination that significant environmental damage to the public resource is occurring or will occur.

Secretaries Andrus and Berglund, whose agencies are most affected by the Executive Order, support these amendments. They are aimed at correcting serious problems on portions of the public lands that are suffering severe damage from overuse by ORV's.

Approve

Disapprove

Other

COMMENTS

WATSON. You may want to consider eliminating proposal #4. We fear that this initiative will become a red flag for opponents of the program, and we were told by Cecil Andrus about a month ago that he could do the things proposed under existing authority.

LANCE. While I do not oppose the regulation of off-road vehicle use on the public lands, I call your attention to this proposed restriction on agency head authority. The Executive Order would have the President be responsible for closure should a case be made that significant environmental damage is or will occur. This removes from agency heads any ability to make trade-offs between some environmental damage and some recreational or other benefits.

5. Mining Reform: A proposal to instruct the Secretary of Interior to develop new legislation replacing the antiquated "finders-keepers" system of the Mining Law of 1872 with a discretionary leasing system for hardrock minerals (e.g., gold, silver, iron, copper, lead, etc.). Coal, oil, gas, and phosphates, for example, are already developed under a leasing system. Secretary Andrus supports this proposal.

Approve

Disapprove

Other

6. Coal Leasing: A proposal to direct Interior to implement an affirmative program to manage federal coal lands in a manner consistent with environmental protection. This would involve determining which lands are appropriate to lease, completing land use plans before deciding to offer specific tracts for sale, and not leasing tracts where environmental impacts would be unacceptable or where the federal government would not receive fair market value. A related proposal would direct the Secretary to carefully evaluate existing leases and take necessary steps to deal with non-producing and environmentally unsatisfactory leases.

Approve

Disapprove

Other

7. Wetlands Executive Order: This executive order would direct federal agencies to refrain from supporting construction in wetlands unless no practicable alternative exists. Such an order would be an important element of a comprehensive wetlands protection program. The draft Message also includes related statements of support for the Corps of Engineers permit program regulating dredging and filling wetlands (an issue you decided earlier this month) and for legislation to increase the price of the "duck" stamp to provide additional revenue for wetlands acquisition.

Approve

Disapprove

Other

8. Floodplain Management Executive Order: This executive order would direct federal agencies to refrain from supporting development in floodplains unless no practicable alternative exists. This proposal could be a significant feature of your program to re-orient water resources policy. It would reinforce current federal policy, now honored too often in the breach, by preventing federal programs from subsidizing unwise floodplain development. Such development often becomes part of the justification for a dam or, if a flood occurs, becomes the basis for federal disaster relief funds to compensate for losses.

Approve

Disapprove

Other

9. Forest Management Review: This proposal would direct the Secretary of Agriculture to undertake a comprehensive review of cooperative forestry programs with a view toward improving organization for and coordination of federal assistance, emphasizing multiple use management and environmental protection, and recommending new initiatives if needed.

Approve

Disapprove

Other

10. Toxic Chemicals: We are proposing that the Message include support of vigorous implementation of the Toxic Substances Control Act, of giving high priority to developing 1983 standards for industry under the Federal Water Pollution Control Act which will provide control of toxics, of changing the FWPCA to improve EPA's ability to control toxic discharges, and developing complementary regulations under the Safe Drinking Water Act. The Message would also direct CEQ to head an interagency effort to design a coherent strategy to improve coordination and information flow among the seven different agencies currently implementing fifteen different statutes regulating toxic chemicals.

Approve

Disapprove

Other

11. Health Effects of Energy Technologies: This proposal would direct the Administrators of ERDA and EPA, and the Secretary of HEW to undertake a continuing review to identify priority health effects issues and research needs for advanced energy technologies. Also proposed is a directive to the Administrators of ERDA and EPA to develop procedures within one year toward establishing environmental protection standards for new energy technologies.

Approve

Disapprove

Other

12. Workplace Environment: In the past, the federal response to occupational health problems has been slow and inefficient, e.g., OSHA has only promulgated four sets of complete occupational health standards in the past seven years. We are proposing that you pledge to give the development of such standards a high priority. Other proposals in this area include support of strengthening amendments to the Federal Coal Mine Health and Safety Act and the Federal Metal and Non-metallic Mine Safety Act, and a pledge to examine the full-range of reforms that might be undertaken, at appropriate levels of government, to assure adequate compensation for occupationally induced diseases.

Approve

Disapprove

Other

COMMENTS

EIZENSTAT. If we are actually asking for an expansion of OSHA's efforts in the health area (where it has been wanting), we should put in some general language to show our sensitivity to the "over regulation" problem involving OSHA in the safety area.

13. Water Quality Enforcement: Looking toward the forthcoming Congressional review of the Federal Water Pollution Control Act, the Message includes proposed statements supporting the imposition of compliance fees on industries not abating pollution on schedule. This proposal would be similar to positions the Administration has taken with respect to the Clean Air Act.

Approve

Disapprove

Other

14. Water Quality Management: This proposal would involve a strong statement in support for completing state and areawide water quality management plans and assure that local planning agencies have the authority to implement their plans. This program is aimed at the difficult problem of controlling pollution from "non-point" sources such as agricultural runoff.

15. Pest Management: Under current law EPA regulates 40,000 formulated pesticide products. This proposal would direct EPA to work with the Congress to change the focus of EPA's regulatory program to the 1,400 basic active chemical ingredients used in pesticides, thereby permitting speedier and more-efficient registration of desirable products and revocation of the registration of products which pose unwarranted risks. Another proposal is to instruct CEQ to recommend to you appropriate federal measures to encourage integrated pest management. CEQ has been working with the Department of Agriculture and EPA on a major assessment of integrated pest management, which will be completed in the near future.

Approve

Disapprove

Other



16. World Population Growth: This is a proposed statement that expresses concern about rapid growth of the world's population and indicates that the U.S. is prepared to be responsive to requests for assistance on population and health care problems. Many people believe that population growth is the world's number one environmental problem. This would be the first time in recent years that an American President has dealt with the issue publicly.

Approve

Disapprove

Other

17. Whales: This proposal would direct the Secretary of Commerce to prohibit commercial whaling with our 200-mile fishing zone, to maintain U.S. support for a 10-year moratorium on whaling, and to report to you in 60-days on the effectiveness of the whale conservation program of the International Whaling Commission.

Approve

Disapprove

Other

OTHER PROPOSALS ON WHICH AGENCIES AGREE

1. National Trails: A proposal to designate three National Scenic Trails; to submit to Congress reports on two other trails; and to submit legislation to add a new category to the system: Historic Trails (e.g., the Lewis and Clark Trail).
2. Cross Florida Barge Canal: A proposal to submit legislation to deauthorize the Cross Florida Barge Canal, authorize study of the Oklawaha River as a Wild and Scenic River, and to extend the boundaries of the Ocala National Forest to further protect the river.
3. Exotic Species Executive Order: A proposal to issue an executive order restricting introduction of foreign plant and wildlife species into U.S. Exemptions are provided for pets and for desirable plants.
4. Wildlife Law Codification: A proposal to instruct CEQ, in consultation with other agencies and states, to recommend the best method to avoid overlapping and conflicting requirements. CEQ has just published a major study of wildlife law.
5. Marine Sanctuaries: A proposal to instruct the Secretary of Commerce to accelerate efforts to identify marine sanctuaries. Prior Administrations have given this program very low priority. Only two sanctuaries have been established so far.
6. Global Environment: A series of proposals to direct the State Department to review U.S. international environmental objectives and programs and report in 90 days; to instruct CEQ and State Department, working with other agencies to study world environmental conditions as a basis for reviewing U.S. policy; to direct the Secretary of State, AID, and other appropriate agencies to consider environment in developing plans and projects; and to instruct AID to pursue environmental and natural resource assistance programs.
7. Protecting the Antarctic: A proposal to submit legislation implementing the Treaty ratified several years ago with the purpose of protecting the Antarctic environment.

8. Barrier Islands: A proposal to direct the Secretary of Interior to develop recommendations for appropriate federal action to protect barrier islands from unwise development.
9. Land and Water Conservation Fund: A proposal to direct the Secretary of Interior to encourage states to consider property acquisition along waterfronts as an element in the Land and Water Conservation Fund in order to capture the benefits of the Federal water pollution control program.
10. Environmental Review Laws: A proposal to instruct CEQ to study federal environmental review requirements and recommend measures to clarify and integrate them.
11. Alaskan Heritage: Proposed statements in general support for moving ahead with designation of parks, wildlife refuges, forests, and scenic rivers in Alaska; a promise to develop detailed recommendations in time for Congressional hearings.
12. Urban Environment: Proposals to direct the Secretary of Housing and Urban Development to expand and improve the urban homesteading program, and to direct all agencies to assure that federally funded projects are compatible with physical, cultural, and social character of communities.
13. Improved Environmental and Health Effects Research: Proposals to direct EPA to meet with industry and develop joint government-industry research efforts; and to instruct CEQ to lead an interagency task force to review environmental monitoring and data needs.
14. Improving Government Coordination: A series of proposals to develop a means to bring together single-purpose federal environmental and other planning programs under a comprehensive policy and to give local authorities more control over federal actions which affect the quality of life; to instruct the Secretary of Housing and Urban Development to lead an effort to support areawide support changing funding of transportation programs in urban areas to provide cities with flexible choices among various modes of transportation; and to submit legislation to combine EPA's grant programs into a comprehensive program.

In addition to the proposals listed above, the draft Message includes brief statements on a number of actions which you have already taken or on which the Administration has an established position, such as the tanker initiative, the Clean Air Act Amendments, expansion of the National Park Service budget, stripmining legislation, and the water resources policy review.

WATSON COMMENT: The DOT Secretary and not the HUD Secretary should lead the effort on transportation.

MAJOR PROPOSALS ON WHICH AGENCIES DISAGREE

1. Resource Conservation Study: This is the other item in the proposed Message that has been the subject of considerable misunderstanding. It is not a proposal for a bottle tax. It is simply a proposal to direct the Resource Conservation Committee established by the Resource Conservation and Recovery Act of 1976 to accelerate by one year the preparation and submission of a study on economic incentives for solid waste disposal which is already required by the Act. The proposal would indicate your commitment to exploring innovative economic techniques for inducing greater recycling and less use of virgin resources.

All agencies agree, except the Department of Commerce. The Department of Commerce, along with the bottling, container, and packaging industries, has expressed opposition to accelerating the study. They believe we should stick to the original two-year deadline.

            
Approve

            
Disapprove

            
Other

EIZENSTAT COMMENT:

Acceleration of EPA study on disposal charges, use of recycled materials, etc.

The Commerce Department is the only agency which objects to moving up the deadline for completion of this study. These objections do not seem compelling. EPA is amenable to speeding up the study, and I believe it is a good idea. The results of the study are not binding either on EPA or on the Administration. However, the sooner we have good information on the various options available for resource recovery and recycling, the easier it will be to develop positions on the various pieces of legislation, most notably the bottle bill, which will inevitably arise in Congress.

Recommend speeding up the study.

2. NEPA Executive Order: A proposal to issue an executive order directing CEQ to issue regulations in order to reform and improve the environmental impact statement review process of the National Environmental Policy Act and to achieve better implementation of that Act's underlying policies.

ISSUE PAPER ATTACHED

COMMENTS FROM WATSON, EIZENSTAT,  
AND LANCE ALSO ATTACHED

Issue Paper  
Environmental Message  
Environmental Impact Statement Reform

1. Issues

The Council on Environmental Quality recommends reforming the environmental impact statement (EIS) process by deemphasizing paper work and emphasizing the substance of agency decisions. The disputed issues arise over the means to be used.

Since passage of the National Environmental Policy Act (NEPA) and its implementing Executive Order in 1970, CEQ has guided federal agencies in the environmental impact statement process by means of nonmandatory "guidelines" which only address NEPA's impact statement procedures and not the Act's other provisions, including the environmental policy provisions. The issues are (1) whether CEQ, in its effort to reduce paperwork and emphasize the underlying substantive policies of NEPA should elevate the status of its guidelines to regulations, and (2) whether CEQ should be authorized to issue regulations or guidelines which apply the policy provisions of NEPA to the substance of agency decisions.

2. Background

NEPA and the impact statement process have been of tremendous benefit in informing the public and in making agency programs more responsive to environmental concerns. Nevertheless, an increasing preoccupation with paperwork and procedure in the EIS process has tended to obscure the Act's underlying policies.

The authority given CEQ under the current Executive Order to promulgate guidelines is limited to the impact statement provision of NEPA (Sec. 102(2)(C)). This has resulted in guidelines which do not directly apply the environmental policy statements in NEPA. Instead, the current guidelines focus only on the "action forcing" procedures, such as the impact statement requirement, which are intended to force the agencies to take the substantive NEPA policies into consideration in the decisionmaking process. By concentrating guidelines on the EIS, production of this document often has been perceived as an end in itself rather than as a means to improved decision-making.

As a result, business and labor complain of the bureaucratic paperwork requirements. Environmentalists fear that the NEPA EIS process which they value highly is being given a bad name by the concentration of paperwork.

Additionally, the CEQ guidelines have not succeeded in preventing inconsistent court rulings. This has led to confusion and uncertainty regarding NEPA requirements and a resulting tendency to resolve uncertainties in favor of greater impact statement length.

3. Discussion - Issue #1. Guidelines or Regulations as to Agency Procedures?

CEQ and OMB agree that regulations governing NEPA procedures which would be binding on other agencies would help to:

- a. Reduce paperwork. Although CEQ's advisory guidelines are highly regarded, they have not been successful in reducing EIS paperwork. The Senate Interior Committee Oversight Report and the staff report of the Federal Paperwork Commission have both recognized the need for stronger direction from CEQ.
- b. Provide clearer guidance to courts, thus avoiding conflicting and misguided court decisions. Courts are more likely to follow regulations and not insist on unnecessary paperwork. People doing business with the federal government and the public generally would benefit from a uniform interpretation of NEPA requirements throughout the federal government.

CEQ and OMB also agree that regulations to be issued by CEQ should be circulated to and reviewed by all units of the Executive Office of the President before they are proposed.

In addition, you should be aware that, while agencies within the Executive Office of the President have on several occasions been given statutory authority to issue regulations and CEQ's authority to issue regulations in this case has been specifically affirmed by the Justice Department, the actual issuance of regulations by an EOP office has been rare. While this is a relevant consideration, neither CEQ nor OMB feels it should be dispositive.

Arguments against CEQ issuing regulations are:

- a. Guideline revisions aimed at paperwork reduction might succeed and should be tried again.
- b. It is inappropriate that CEQ have regulatory authority over other agencies' NEPA practices.
- c. Regulations might lead to more court-occasioned delays in that there would be more requirements to violate.

- d. Different agencies should have discretion to interpret NEPA differently since agency programs and missions differ considerably. This will also assist agencies in meshing NEPA's requirements with other procedures which the particular agency has. CEQ might involve itself in areas where expertise is needed which it lacks.

Discussion - Issue #2. Procedures only or Procedures and Substance?

Those using the term "substance" or "substantive requirements" of NEPA mean the national environmental policies set out principally in Sec. 101 of the Act. Many Federal agencies, CEQ, and most Courts of Appeal view these statements of national environmental policy as substantive goals which the Congress intended all Federal agencies to pursue using the procedural means set out in Sec. 102(2). OMB, most Federal agencies, and some Courts do not share this view. They believe that the statements of national environmental policy are too vague to be applied as substantive objectives for all Federal agencies under all circumstances.

CEQ believes that it should be authorized to issue regulations to implement all provisions of NEPA -- not only the procedural provisions. The authority to develop broader regulations is needed to:

- a. Prevent an undue emphasis on paperwork and procedure by focusing on other provisions of NEPA and not merely the EIS procedure. The EIS process is a means of implementing the substantive requirements of the Act and not an end in itself.
- b. Achieve a greater measure of environmental protection by ensuring that agencies do not ignore the sections of NEPA other than the EIS provisions.
- c. Ensure that the underlying policies of NEPA are recognized and achieved. 1/

1/ Ways in which regulations might be formulated to carry out NEPA's substantive requirements are the models used by the States of California and New York with their "little NEPAs" patterned on the Federal law. They state that when an environmental impact statement reveals serious environmental problems, the decision makers must in the ordinary course of events choose the less environmentally harmful alternative course of action or choose mitigation measures that will minimize the environmental harm (unless there are specific economic or social factors which override the environmental factors).



OMB and most other agencies oppose CEQ regulations extending beyond the NEPA procedural requirements because:

- a. CEQ would be authorized to impose specific environmental requirements, derived from vague and general statutory language, on the substantive programs and policies of other agencies. This could result in an undue shift of power to CEQ.
- b. CEQ regulations in this area could conflict with the more specific environmental standards and regulations appropriately established under statutes enacted for that purpose (e.g., the Clean Air Act, the Water Pollution Control Act).

4. Decision (SEE SENIOR STAFF COMMENTS ON NEXT PAGE)

1. Authorize CEQ to replace its present NEPA guidelines with regulations which cover both procedures and substance. (This is the CEQ preferred position.) 2/ ☐
2. Authorize CEQ to replace its present NEPA guidelines with regulations which cover procedures (Section 102(2) of NEPA) only. Direct CEQ to prepare an Executive order for the President to consider which would direct agencies to take steps to better implement the national environmental policy stated in NEPA. (This is the position preferred by OMB on the grounds that it is more appropriate for the President to direct agencies' substantive compliance with NEPA than for CEQ to do so. While not the CEQ preferred position, it is one acceptable to CEQ.) ☐
3. Authorize CEQ to replace its present NEPA guidelines with regulations which cover only procedures. No action on substance. ☐
4. Revise CEQ NEPA guidelines with respect to procedures (impact statements and other procedures of Sec. 102(2)). ☐

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2/ The agencies which oppose CEQ's proposal include ACDA, Agriculture, CAB, Eximbank, ERDA, FEA, HUD, Interior, NRC, State, Transportation, and TVA. The agencies which do not oppose CEQ's proposal include CSC, EPA, Justice, NASA, NSC, Postal Service, SBA, Treasury, and VA.

COMMENTS

1. WATSON. We strongly support Charlie's proposed Executive Order on NEPA.
2. LANCE: I strongly recommend against empowering CEQ to regulate agency head decisions on the substance of NEPA (CEQ Option #1) as it represents a significant realignment of power between the Executive Office and your agency heads in the direction of centralization. While I would not oppose your empowering CEQ to issue binding regulations covering the procedures by which agency heads must comply with NEPA (CEQ Options #2 and #3), I nevertheless call this issue to your attention.
3. EIZENSTAT:

The environmental impact statement process has gotten out of hand, and I feel, as does OMB, that there is merit to giving CEQ ability to issue regulations on the impact statement process. This should not require additional staff or resources since CEQ already has guidelines in this area. More clearly defined procedural requirements will be helpful both to the agencies and to the courts. If properly done, these regulations could help reduce paperwork considerably. However, I have severe reservations about permitting CEQ to issue regulations which go to the substance of agency decision-making. While many agencies have not paid attention to the substantive requirements of the National Environmental Policy Act, I do not think that issuance of regulations will help resolve this problem. An executive order would be more helpful.

In addition, many of the pollution control statutes directly specify the criteria for use in environmental decision-making, and another layer of regulation would make an already complicated task more difficult.

Recommend Option 2 as listed in the Warren decision memo (Guidelines replaced with regulations for procedural issues, but no regulatory authority for the substance of decisions.) Doug Costle of EPA has expressed strong preference for this option as well.

3. Non-game Wildlife: A proposal to submit legislation to provide up to \$210 million over the next five years to assist States develop improved programs for the conservation of non-game wildlife species.

ISSUE PAPER, AND COMMENTS  
FROM EIZENSTAT & LANCE  
ATTACHED.

Issue Paper  
Environmental Message  
Nongame Wildlife

Statement of Issue

Should there be a new initiative for the management of non-game wildlife?

Background

States, as trustees for wildlife unless specifically preempted by the Federal Government, manage wildlife primarily for sport or game management purposes. Most wildlife is non-game, e.g., of the 800 species of birds, only 60 are game species. Because of the concentration on game species, the conservation needs of the vast majority of wildlife species most seen and appreciated by the American public are not addressed.

Part of the existing Federal-Aid Grants to States for fish and wildlife programs (which totaled \$114M in 78) can be used for the protection of all terrestrial wildlife, but this part is primarily used by States for the benefit of game species. This is because (1) the Federal funds are derived from taxes on hunting and fishing equipment and (2) the sportsmen's groups have more influence at the State level than supporters of nongame wildlife management.

Thus, some believe there is need for a special Federal grant program to pay State costs of managing nongame species. Since 97 percent of Federal and 99 percent of State wildlife management funding is directed to game species, little is known about the status or conservation needs of the other 99 percent of vertebrate wildlife species. No complete analysis has been done to indicate to what extent a nongame wildlife management problem exists, what would be the budgetary goals of a nongame program, or what the ultimate costs would be. States now put \$325M/year into wildlife management of which \$260M are from State revenues.

Alternatives

1. Propose a nongame wildlife bill in the Environmental Message which would establish grants up to \$50M per year (\$210M over 5 years) to States for comprehensive wildlife planning and for subsequent implementation of the nongame portion of such plans (Council on Environmental Quality proposal).
2. Direct the Secretary of the Interior in the Environmental Message to study the problem and develop alternatives for managing nongame species within 120 days of the Environmental Message as part of the design for the National Heritage Trust.

3. Direct the Secretary of the Interior in the Environmental Message to encourage States to apply existing Federal-Aid funds (\$114M in fiscal 1978) to the management of all species of wildlife.

#### Analysis

Alternative #1. Propose a nongame wildlife bill in the Environmental Message which is complimentary to the existing Federal-State programs and would establish grants up to \$50M per year (210M over 5 years) to States for nongame species planning and for subsequent implementation of such plans (Council on Environmental Quality proposal).

#### Pros

- The bill can provide the comprehensive planning for wildlife which does not now exist in state programs and can serve as a model for reform of existing wildlife funding programs.
- The bill provides the funding needed to conserve and manage a much broader range of wildlife than present programs address.
- In his campaign, the President stated his support for establishing a Federal-State nongame wildlife program.
- There is strong outside support from States and the conservation community. There is no known outside opposition.

#### Cons

- There has not been comprehensive analysis of the goals and outputs expected from this program, nor is there a complete analysis of funds needed to attain program goals.
- A new categorical grant would be established for nongame wildlife, in addition to existing categoricals for fish, anadromous fish, game wildlife, and endangered species.
- Some Federal-Aid funds may already be used to protect nongame wildlife and Congress in 1955 amended the Federal-Aid laws in order to encourage States to apply some Federal-Aid funds toward the benefit of all wildlife.

- Action may be premature in light of the National Heritage Trust proposal, to be developed within 120 days after the Environmental Message, which will consider consolidating existing grants in the natural, historic, and flora and fauna area.

Alternative #2. Direct the Secretary of the Interior in the Environmental Message to study the problem and develop alternatives for managing nongame species within 120 days of the Environmental Message as part of the design for the National Heritage Trust.

Pros

- Identification of the need, objectives to be served, and consideration of a new categorical wildlife grant could be merged with an analysis and consolidation of other habitat acquisition programs, and the various planning requirements and grants in the wildlife field as part of the reorganization and studies for the National Heritage Trust.
- Helps avoid precipitous action that may result from making proposals without problem analysis, definition of objectives, or budgetary analysis.

Cons

- Delay may disappoint advocates of an immediate nongame program.

Alternative #3. Direct the Secretary of the Interior in the Environmental Message to encourage States to apply existing Federal-Aid funds (\$114M in fiscal 1978) to the management of all species of wildlife.

Pros

- This approach provides Presidential visibility on the nongame topic.
- A new categorical grant would not be necessary and additional costs would be avoided.

Cons

- May disappoint advocates of a new nongame program.

- States strongly oppose this approach, believing that since Federal-Aid funds are raised by excise taxes on hunting and fishing equipment, funds should be spent primarily for purposes of game management.

Council on Environmental Quality Proposal: Alternative #1  
The proposal has been cleared by all agencies but OMB.

Recommendations: CEQ recommends Alternative #1, announcement of the new \$50M/year grant program now. OMB recommends Alternative #3 as first choice. Alternative #2 as second choice.

Alternative #1

☐ Approve ☐ Disapprove ☐ Other

Alternative #2

☐ Approve ☐ Disapprove ☐ Other

Alternative #3

☐ Approve ☐ Disapprove ☐ Other

#### COMMENTS

1. LANCE. I strongly recommend against establishing a new categorical grant program to support State management of wildlife (CEQ Option #1). This proposal runs against our efforts to contain expansion of the budget between now and 1981, and is or relatively low priority in terms of need for additional Federal funding. This is demonstrated by the fact that States spend very little of their own money on this activity, and very little of the existing Federal grant funds eligible to be spent on non-game wildlife.
2. EIZENSTAT: (on next page)

3. Nongame wildlife

Nongame wildlife management has not received the same level of support as has sport wildlife. In many areas of the country these species are in poor condition. One of your campaign statements expressed strong support for an improved nongame wildlife program.

The options in the Warren memo are: commit now to \$210 million in funding over five years; defer a decision until we have developed a

National Heritage Trust proposal and link nongame programs to that program; spend no new money, but ask states to pay more attention to nongame programs. There is an alternative to these options which makes more sense to me.

This alternative approach would latch onto the wildlife law review and recodification which CEQ proposes elsewhere in the message. There is considerable duplication and overlap between existing grant-in-aid and wildlife management programs, and a review would provide insights on how this entire program could best be structured and what degree of funding is needed. This is preferable to looking at the wildlife issue in connection with the Heritage Trust program, which is not particularly relevant to this issue.

Any proposal we might make at this time would probably arrive too late in order to be considered in the FY'78 budget. I think it makes sense to review this funding request along with the FY'79 budget, even though the CEQ funding recommendation may be precisely what is needed. There are also alternative funding approaches, such as one offered by Senator Gary Hart which would finance nongame wildlife programs through a tax on outdoor recreation equipment (tents, backpacks, etc.). While Treasury has expressed problems with this approach, something might be worked out here.

Recommendation: Issue a strong statement of support for improving our nongame wildlife programs, but defer development of a specific proposal until the wildlife codification study is complete. Review the funding issue in connection with the FY'79 budget review.





Issue Paper  
Environmental Message  
Environmental Impact Statement Reform

1. Issues

The Council on Environmental Quality recommends reforming the environmental impact statement (EIS) process by deemphasizing paper work and emphasizing the substance of agency decisions. The disputed issues arise over the means to be used.

Since passage of the National Environmental Policy Act (NEPA) and its implementing Executive Order in 1970, CEQ has guided federal agencies in the environmental impact statement process by means of nonmandatory "guidelines" which only address NEPA's impact statement procedures and not the Act's other provisions, including the environmental policy provisions. The issues are (1) whether CEQ, in its effort to reduce paperwork and emphasize the underlying substantive policies of NEPA should elevate the status of its guidelines to regulations, and (2) whether CEQ should be authorized to issue regulations or guidelines which apply the policy provisions of NEPA to the substance of agency decisions.

2. Background

NEPA and the impact statement process have been of tremendous benefit in informing the public and in making agency programs more responsive to environmental concerns. Nevertheless, an increasing preoccupation with paperwork and procedure in the EIS process has tended to obscure the Act's underlying policies.

The authority given CEQ under the current Executive Order to promulgate guidelines is limited to the impact statement provision of NEPA (Sec. 102(2)(C)). This has resulted in guidelines which do not directly apply the environmental policy statements in NEPA. Instead, the current guidelines focus only on the "action forcing" procedures, such as the impact statement requirement, which are intended to force the agencies to take the substantive NEPA policies into consideration in the decisionmaking process. By concentrating guidelines on the EIS, production of this document often has been perceived as an end in itself rather than as a means to improved decision-making.

As a result, business and labor complain of the bureaucratic paperwork requirements. Environmentalists fear that the NEPA EIS process which they value highly is being given a bad name by the concentration of paperwork.

Additionally, the CEQ guidelines have not succeeded in preventing inconsistent court rulings. This has led to confusion and uncertainty regarding NEPA requirements and a resulting tendency to resolve uncertainties in favor of greater impact statement length.

3. Discussion - Issue #1. Guidelines or Regulations as to Agency Procedures?

CEQ and OMB agree that regulations governing NEPA procedures which would be binding on other agencies would help to:

- a. Reduce paperwork. Although CEQ's advisory guidelines are highly regarded, they have not been successful in reducing EIS paperwork. The Senate Interior Committee Oversight Report and the staff report of the Federal Paperwork Commission have both recognized the need for stronger direction from CEQ.
- b. Provide clearer guidance to courts, thus avoiding conflicting and misguided court decisions. Courts are more likely to follow regulations and not insist on unnecessary paperwork. People doing business with the federal government and the public generally would benefit from a uniform interpretation of NEPA requirements throughout the federal government.

CEQ and OMB also agree that regulations to be issued by CEQ should be circulated to and reviewed by all units of the Executive Office of the President before they are proposed.

In addition, you should be aware that, while agencies within the Executive Office of the President have on several occasions been given statutory authority to issue regulations and CEQ's authority to issue regulations in this case has been specifically affirmed by the Justice Department, the actual issuance of regulations by an EOP office has been rare. While this is a relevant consideration, neither CEQ nor OMB feels it should be dispositive.

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- a. Prevent an undue emphasis on paperwork and procedure by focusing on other provisions of NEPA and not merely the EIS procedure. The EIS process is a means of implementing the substantive requirements of the Act and not an end in itself.
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1/ Ways in which regulations might be formulated to carry out NEPA's substantive requirements are the models used by the States of California and New York with their "little NEPAs" patterned on the Federal law. They state that when an environmental impact statement reveals serious environmental problems, the decision makers must in the ordinary course of events choose the less environmentally harmful alternative course of action or choose mitigation measures that will minimize the environmental harm (unless there are specific economic or social factors which override the environmental factors).

OMB and most other agencies oppose CEQ regulations extending beyond the NEPA procedural requirements because:

- a. CEQ would be authorized to impose specific environmental requirements, derived from vague and general statutory language, on the substantive programs and policies of other agencies. This could result in an undue shift of power to CEQ.
- b. CEQ regulations in this area could conflict with the more specific environmental standards and regulations appropriately established under statutes enacted for that purpose (e.g., the Clean Air Act, the Water Pollution Control Act).

4. Decision

1. Authorize CEQ to replace its present NEPA guidelines with regulations which cover both procedures and substance. (This is the CEQ preferred position.) 2/ ☐
2. Authorize CEQ to replace its present NEPA guidelines with regulations which cover procedures (Section 102(2) of NEPA) only. Direct CEQ to prepare an Executive order for the President to consider which would direct agencies to take steps to better implement the national environmental policy stated in NEPA. (This is the position preferred by OMB on the grounds that it is more appropriate for the President to direct agencies' substantive compliance with NEPA than for CEQ to do so. While not the CEQ preferred position, it is one acceptable to CEQ.) ☐
3. Authorize CEQ to replace its present NEPA guidelines with regulations which cover only procedures. No action on substance. ☐
4. Revise CEQ NEPA guidelines with respect to procedures (impact statements and other procedures of Sec. 102(2)). ☐

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B

Issue Paper  
Environmental Message  
Nongame Wildlife

Statement of Issue

Should there be a new initiative for the management of non-game wildlife?

Background

States, as trustees for wildlife unless specifically preempted by the Federal Government, manage wildlife primarily for sport or game management purposes. Most wildlife is non-game, e.g., of the 800 species of birds, only 60 are game species. Because of the concentration on game species, the conservation needs of the vast majority of wildlife species most seen and appreciated by the American public are not addressed.

Part of the existing Federal-Aid Grants to States for fish and wildlife programs (which totaled \$114M in 78) can be used for the protection of all terrestrial wildlife, but this part is primarily used by States for the benefit of game species. This is because (1) the Federal funds are derived from taxes on hunting and fishing equipment and (2) the sportsmen's groups have more influence at the State level than supporters of nongame wildlife management.

Thus, some believe there is need for a special Federal grant program to pay State costs of managing nongame species. Since 97 percent of Federal and 99 percent of State wildlife management funding is directed to game species, little is known about the status or conservation needs of the other 99 percent of vertebrate wildlife species. No complete analysis has been done to indicate to what extent a nongame wildlife management problem exists, what would be the budgetary goals of a nongame program, or what the ultimate costs would be. States now put \$325M/year into wildlife management of which \$260M are from State revenues.

Alternatives

1. Propose a nongame wildlife bill in the Environmental Message which would establish grants up to \$50M per year (\$210M over 5 years) to States for comprehensive wildlife planning and for subsequent implementation of the nongame portion of such plans (Council on Environmental Quality proposal).
2. Direct the Secretary of the Interior in the Environmental Message to study the problem and develop alternatives for managing nongame species within 120 days of the Environmental Message as part of the design for the National Heritage Trust.

3. Direct the Secretary of the Interior in the Environmental Message to encourage States to apply existing Federal-Aid funds (\$114M in fiscal 1978) to the management of all species of wildlife.

#### Analysis

Alternative #1. Propose a nongame wildlife bill in the Environmental Message which is complimentary to the existing Federal-State programs and would establish grants up to \$50M per year (210M over 5 years) to States for nongame species planning and for subsequent implementation of such plans (Council on Environmental Quality proposal).

#### Pros

- The bill can provide the comprehensive planning for wildlife which does not now exist in state programs and can serve as a model for reform of existing wildlife funding programs.
- The bill provides the funding needed to conserve and manage a much broader range of wildlife than present programs address.
- In his campaign, the President stated his support for establishing a Federal-State nongame wildlife program.
- There is strong outside support from States and the conservation community. There is no known outside opposition.

#### Cons

- There has not been comprehensive analysis of the goals and outputs expected from this program, nor is there a complete analysis of funds needed to attain program goals.
- A new categorical grant would be established for nongame wildlife, in addition to existing categoricals for fish, anadromous fish, game wildlife, and endangered species.
- Some Federal-Aid funds may already be used to protect nongame wildlife and Congress in 1955 amended the Federal-Aid laws in order to encourage States to apply some Federal-Aid funds toward the benefit of all wildlife.



- Action may be premature in light of the National Heritage Trust proposal, to be developed within 120 days after the Environmental Message, which will consider consolidating existing grants in the natural, historic, and flora and fauna area.

Alternative #2. Direct the Secretary of the Interior in the Environmental Message to study the problem and develop alternatives for managing nongame species within 120 days of the Environmental Message as part of the design for the National Heritage Trust.

Pros

- Identification of the need, objectives to be served, and consideration of a new categorical wildlife grant could be merged with an analysis and consolidation of other habitat acquisition programs, and the various planning requirements and grants in the wildlife field as part of the reorganization and studies for the National Heritage Trust.
- Helps avoid precipitous action that may result from making proposals without problem analysis, definition of objectives, or budgetary analysis.

Cons

- Delay may disappoint advocates of an immediate nongame program.

Alternative #3. Direct the Secretary of the Interior in the Environmental Message to encourage States to apply existing Federal-Aid funds (\$114M in fiscal 1978) to the management of all species of wildlife.

Pros

- This approach provides Presidential visibility on the nongame topic.
- A new categorical grant would not be necessary and additional costs would be avoided.

Cons

- May disappoint advocates of a new nongame program.

- States strongly oppose this approach, believing that since Federal-Aid funds are raised by excise taxes on hunting and fishing equipment, funds should be spent primarily for purposes of game management.

Council on Environmental Quality Proposal: Alternative #1  
The proposal has been cleared by all agencies but OMB.

Recommendations: CEQ recommends Alternative #1, announcement of the new \$50M/year grant program now. OMB recommends Alternative #3 as first choice. Alternative #2 as second choice.

Alternative #1

☐ Approve    ☐ Disapprove    ☐ Other

Alternative #2

☐ Approve    ☐ Disapprove    ☐ Other

Alternative #3

☐ Approve    ☐ Disapprove    ☐ Other

Date: April 23, 1977

## MEMORANDUM

## FOR ACTION:

The Vice President  
Midge Costanza Jack Watson  
Stu Eizenstat Jim Fallows  
Hamilton Jordan Bert Lance  
Bob Lipshutz Jim Schlesinger  
Frank Moore Charles Schultze

FOR INFORMATION: Jody Powell

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Charles Warren memo 4/22 re Circulation of Attached  
Memorandum to Senior White House Staff.

YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:

TIME: 10:00 A.M.

DAY: Thursday

DATE: April 29, 1977

## ACTION REQUESTED:

☒ X. Your comments

Other:

## STAFF RESPONSE:

☐ I concur.☐ No comment.*Please note other comments below:*PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

EXECUTIVE OFFICE OF THE PRESIDENT  
COUNCIL ON ENVIRONMENTAL QUALITY  
722 JACKSON PLACE, N. W.  
WASHINGTON, D. C. 20006

April 22, 1977

MEMORANDUM FOR RICK HUTCHESON

FROM: Charles Warren *CW-*  
SUBJECT: Circulation of Attached Memorandum to Senior  
White House Staff

I am enclosing ten copies of a memorandum for the President on the Environmental Message. The text of the message itself is being edited by Griffin Smith and we expect that he will be ready with a version for the President's review by Thursday or Friday. Given the many complex issues covered in the memo I would recommend you allot the Senior Staff an extra day or two for review.

Let me know if I can answer any questions for you on this matter.

THE WHITE HOUSE  
WASHINGTON

*Due Thursday*

ACTION	FYI
<input checked="" type="checkbox"/>	MONDALE
<input checked="" type="checkbox"/>	COSTANZA
<input checked="" type="checkbox"/>	EIZENSTAT
<input checked="" type="checkbox"/>	JORDAN
<input checked="" type="checkbox"/>	LIPSHUTZ
<input checked="" type="checkbox"/>	MOORE
<input checked="" type="checkbox"/>	POWELL
<input checked="" type="checkbox"/>	WATSON

<input type="checkbox"/>	ENROLLED BILL
<input type="checkbox"/>	AGENCY REPORT
<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER
Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day	

<input checked="" type="checkbox"/>	FOR STAFFING
<input type="checkbox"/>	FOR INFORMATION
<input type="checkbox"/>	FROM PRESIDENT'S OUTBOX
<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
<input type="checkbox"/>	IMMEDIATE TURNAROUND

<input type="checkbox"/>	ARAGON
<input type="checkbox"/>	BOURNE
<input type="checkbox"/>	BRZEZINSKI
<input type="checkbox"/>	BUTLER
<input type="checkbox"/>	CARP
<input type="checkbox"/>	H. CARTER
<input type="checkbox"/>	CLOUGH
<input checked="" type="checkbox"/>	FALLOWS
<input type="checkbox"/>	FIRST LADY
<input type="checkbox"/>	GAMMILL
<input type="checkbox"/>	HARDEN
<input type="checkbox"/>	HOYT
<input type="checkbox"/>	HUTCHESON
<input type="checkbox"/>	JAGODA
<input type="checkbox"/>	KING

<input type="checkbox"/>	KRAFT
<input checked="" type="checkbox"/>	LANCE
<input type="checkbox"/>	LINDER
<input type="checkbox"/>	MITCHELL
<input type="checkbox"/>	POSTON
<input type="checkbox"/>	PRESS
<input type="checkbox"/>	B. RAINWATER
<input checked="" type="checkbox"/>	SCHLESINGER
<input checked="" type="checkbox"/>	SCHNEIDERS
<input checked="" type="checkbox"/>	SCHULTZE
<input type="checkbox"/>	SIEGEL
<input type="checkbox"/>	SMITH
<input type="checkbox"/>	STRAUSS
<input type="checkbox"/>	WELLS
<input type="checkbox"/>	VOORDE

Date: April 23, 1977

## MEMORANDUM

## FOR ACTION:

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 TO THE STAFF SECRETARY BY:

TIME: 10:00 A.M.

DAY: Thursday

DATE: April 29, 1977

## ACTION REQUESTED:

☒ Your comments

Other:

## STAFF RESPONSE:

☐ I concur.☒ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

logged 4/23  
 Routing - CLS min  
 PG + then  
 to JCE +  
 back to  
 WN


4/28 Returned to  
 R Hutcheson

THE WHITE HOUSE

WASHINGTON

April 29, 1977

MEMORANDUM FOR THE PRESIDENT

FROM STU EIZENSTAT 

SUBJECT: Warren Memo of 4/22 on Environmental Message

CEQ has done a good job of laying out the issues proposed for inclusion in an environmental message. I have reviewed each of the items designated as "Major Proposals on which agencies agree" and concur in each of them. The political problems which arose from false alarms on the off-road vehicle and other issues are not present in the CEQ proposal. I have one comment on item 12 in the Warren memo: If, as Warren suggests, we are actually asking for an expansion of OSHA's efforts in the health area (where it has been wanting), we should put in some general language to show our sensitivity to the "over regulation" problem which has occurred by OSHA in the safety area.

As to those issues still in disagreement I have the following comments and recommendations:

1. Acceleration of EPA study on disposal charges, use of recycled materials, etc.

The Commerce Department is the only agency which objects to moving up the deadline for completion of this study. These objections do not seem compelling. EPA is amenable to speeding up the study, and I believe it is a good idea. The results of the study are not binding either on EPA or on the Administration. However, the sooner we have good information on the various options available for resource recovery and recycling, the easier it will be to develop positions on the various pieces of legislation, most notably the bottle bill, which will inevitably arise in Congress.

Recommend speeding up the study.

2. CEQ's ability to issue regulations to implement both procedure and substance of NEPA.

The environmental impact statement process has gotten out of hand, and I feel, as does OMB, that there is merit to giving CEQ ability to issue regulations on the impact statement process. This should not require additional staff or resources since CEQ already has guidelines in this area. More clearly defined procedural requirements will be helpful both to the agencies and to the courts. If properly done, these regulations could help reduce paperwork considerably. However, I have severe reservations about permitting CEQ to issue regulations which go to the substance of agency decision-making. While many agencies have not paid attention to the substantive requirements of the National Environmental Policy Act, I do not think that issuance of regulations will help resolve this problem. An executive order would be more helpful.

In addition, many of the pollution control statutes directly specify the criteria for use in environmental decision-making, and another layer of regulation would make an already complicated task more difficult.

Recommend Option 2 as listed in the Warren decision memo (Guidelines replaced with regulations for procedural issues, but no regulatory authority for the substance of decisions.) Doug Costle of EPA has expressed strong preference for this option as well.

3. Nongame wildlife

Nongame wildlife management has not received the same level of support as has sport wildlife. In many areas of the country these species are in poor condition. One of your campaign statements expressed strong support for an improved nongame wildlife program.

The options in the Warren memo are: commit now to \$210 million in funding over five years; defer a decision until we have developed a



National Heritage Trust proposal and link nongame programs to that program; spend no new money, but ask states to pay more attention to nongame programs. There is an alternative to these options which makes more sense to me.

This alternative approach would latch onto the wildlife law review and recodification which CEQ proposes elsewhere in the message. There is considerable duplication and overlap between existing grant-in-aid and wildlife management programs, and a review would provide insights on how this entire program could best be structured and what degree of funding is needed. This is preferable to looking at the wildlife issue in connection with the Heritage Trust program, which is not particularly relevant to this issue.

Any proposal we might make at this time would probably arrive too late in order to be considered in the FY'78 budget. I think it makes sense to review this funding request along with the FY'79 budget, even though the CEQ funding recommendation may be precisely what is needed. There are also alternative funding approaches, such as one offered by Senator Gary Hart which would finance nongame wildlife programs through a tax on outdoor recreation equipment (tents, backpacks, etc.). While Treasury has expressed problems with this approach, something might be worked out here.

Recommendation: Issue a strong statement of support for improving our nongame wildlife programs, but defer development of a specific proposal until the wildlife codification study is complete. Review the funding issue in connection with the FY'79 budget review.

4. Timing and Message Content

Jim Fallows' staff has been working with CEQ and my staff to clean up the language of the message. They expect a draft to be ready for your review over the weekend. I think the message should be sent only after you have returned to the country from your European trip, unless you feel you have time to focus on it before the Summit. This also should be checked with Jody, who, I believe, prefers a post-Summit date.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM TO: THE PRESIDENT

FROM:

Jack Watson  
Jane Frank

April 28, 1977

RE:

Environmental Message

Charlie Warren's memorandum is excellent. We have only these suggestions:

1. In explaining your environmental program, you should stress that the initiatives will save money by conserving precious resources.
2. You may want to consider eliminating proposal #4 on off-road vehicles which, as Warren says, "has been the subject of considerable misunderstanding." We fear that this initiative will become a red flag for opponents of the program, and we were told by Cecil Andrus about a month ago that he could do the things proposed under existing authority.
3. Proposal #12 might reference the need to reform OSHA.
4. We strongly support Charlie's proposed Executive Order on NEPA mentioned on page 6 and detailed in Tab A.
5. In proposal #14 on page 8, the Secretary of Transportation and not the Secretary of HUD should lead the effort on transportation.
6. There is nothing in the program specifically to clean up the Potomac--a promise President Johnson made and never kept. This initiative would have enormous importance to area residents. Could we earmark some existing funds?



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

APR 28 1977

MEMORANDUM FOR: THE PRESIDENT  
FROM: Bert Lance *BL*  
SUBJECT: Environmental Message

This memorandum provides Office of Management and Budget comments on the draft Environmental Message and the Council on Environmental Quality memorandum to you of April 22, 1977.

Legislation: Attachment A lists the commitments to legislation included in the Message.

Budget: Attachment B identifies the Message's budgetary commitments. I generally support them except for the proposed new categorical grant for State wildlife management (\$50M/year), discussed below.

Regulation: Attachment C lists those statements in the draft Message in which you support new Federal regulation on environmental issues. I bring them to your attention in light of your general policy stance favoring reduction in the regulatory burden on our society and economy.

Position on identified issues: I generally support the content of the Environmental Message. However, I call your attention to the following specific points:

- NEPA Executive Order (p. 6, item 2, and tab A of the CEQ memorandum). This proposed Executive Order would empower the Council on Environmental Quality to issue regulations (not guidelines or instructions) binding on the heads of all your executive agencies. I strongly recommend against empowering CEQ to regulate agency head decisions on the "substance" of the National Environmental Policy Act (CEQ option 1) as it represents a significant realignment of power between the Executive Office and your agency heads in the direction of centralization.

While I would not oppose your empowering CEQ to issue binding regulations covering the procedures by which agency heads must comply with NEPA (CEQ options 2 and 3), I nevertheless call this issue to your attention.

- Non-game wildlife categorical grant (p. 7, item 3, and tab B of April 22 memorandum). I strongly recommend against establishing a new categorical grant program to support State management of wildlife (the CEQ recommended alternative #1). In addition to the arguments against, stated on p. 2 of tab B (which I believe should be the controlling arguments), this proposal

- runs directly counter to our efforts to contain expansion of the budget between now and 1981, and

- is of relatively low priority in terms of need for additional Federal funding. This is demonstrated by the fact that States spend very little of their own money on this activity and very little of the existing Federal grant funds eligible to be spent on non-game wildlife.

- Off-road vehicles (pp. 2-3, item 4). Under the proposed Executive Order you would direct agency heads to close portions of Federal lands to certain off-road vehicles upon a finding by the agency head that such vehicles are causing or will cause significant environmental damage thereto. Thus, you remove from the agency heads any ability to make trade-offs between some environmental damage and some recreational or other benefits.

While I do not oppose the regulation of off-road vehicle use on the public lands, I call your attention to this proposed restriction on agency head authority - which makes you clearly responsible for closure should a case be made to the responsible Secretary that significant environmental damage is or will occur.

Attachments

ENVIRONMENTAL MESSAGE LEGISLATIONI. Support of proposals now before Congress.

- Sewer Grant Reform: includes the 10-year, \$45 billion funding authorization.
  - Community Development Block Grant Program.
  - Housing Rehabilitation Loan Program: continuation of Section 312.
  - Waterways User Charges: those who use the waterways heretofore built and operated at the expense of the general taxpayer should be assessed user charges.
  - Alaska Conservation Act: some modification of this proposal is very likely; as submitted to the 94th Congress by the Ford Administration, it would have created over 80 million acres of National Forests and Parks, Wildernesses, Refuges, and Wild and Scenic Rivers in Alaska.
  - Comprehensive Oil Pollution Liability and Compensation Act.
  - Ratification of the International Convention for the Prevention of Pollution from Ships.
  - Amendments to Improve the Outer Continental Shelf Lands Act.
  - Various proposals detailed in the Energy Message on April 20.
  - Strip Mine Legislation.
  - Duck Stamps: increase the price of the migratory bird conservation and hunting stamp in order to provide additional revenues for the acquisition of habitat for our Nation's waterfowl.
  - Wilderness Designation Proposals: support for sundry proposals submitted by previous Administrations.
  - Recombinant DNA: provide safeguards such as licensing of laboratories performing such work and the registration of individual projects with HEW.
- ..

II. Legislation being submitted concurrent with the Message.

- Federal Aid for Wildlife Conservation Act:  
provides assistance to the States for developing improved programs for the conservation of non-game species.
- Antarctica Act: implements measures agreed among the Antarctica Treaty parties to provide for special protection of the unique flora and fauna of Antarctica.
- Historic Trails Act: amends the National Scenic Trails Act to provide a new category of Historic Trails.
- Cross Florida Barge Canal Project Deauthorization:  
provides for termination of this project.
- Study Oklawaha River for Wild & Scenic River Designation: provides (1) for designating the Oklawaha River as a study river under the Wild & Scenic Rivers Act and (2) for transferring certain lands to the Forest Service and authorizing the acquisition of Canal Authority lands as components of the Ocala National Forest.
- Amend the Wild & Scenic Rivers Act: (1) to add 20 rivers to the Wild & Scenic Rivers study list; and (2) increase appropriation authorizations for (a) river studies and (b) land acquisition covering five specific rivers.
- Designate Wilderness:
  - \* Arches National Park, Utah
  - \* Canyon Lands National Park, Utah
  - \* Capital Reef National Park, Utah
  - \* Buffalo National River, Arkansas
- Designate National Scenic Trails:
  - \* Continental Divide, Rocky Mountain States
  - \* North Country, from eastern New York to North Dakota
  - \* Potomac Heritage, Maryland, Va., West Va., and Pa.

-- Designate Wild and Scenic Rivers:

- \* Bruneau, Idaho
- \* Pere Marquette, Michigan
- \* Dolores, Colorado
- \* Rio Grande, Texas
- \* Salmon, Idaho
- \* Skagit, Washington
- \* Upper Delaware, N.Y., N.J., Pa.

III. Near-term legislative commitments.

-- Designate wilderness: (submission in May)

New Proposal:

- \* Gulf Islands National Seashore, Mississippi - Florida

Proposed Enlargement

- \* Grand Canyon National Park, Arizona

- Public Involvement: consistent with the President's conceptual support of the "Public Participation in Federal Agency Proceedings Act of 1977," work closely with the Congress is pressing for early enactment of some version of this legislation.

IV. Future legislative commitments.

A. Those with specific deadlines:

- Barrier Island Protection: The Secretary of the Interior is to investigate the most effective ways to protect coastal barrier islands and to report to the President within 3 months with recommendations for proposed legislation, an executive order, or other Federal action that is appropriate to achieve this purpose.
- Global Environment: The Department of State will provide to the President, within 90 days, an integrated program, including legislation, where required, to improve our performance in meeting global environmental problems.

- National Heritage Act: The Secretary of the Interior is to provide the President, within 120 days, with a proposal to protect areas that have unique natural characteristics, special historical significance, or particular educational, scientific, cultural, or recreational values.
- Codification of wildlife conservation law: report to the President within six months.

B. Those without specific deadlines:

-- Designate wilderness:

New Proposals: (Quick interagency review must be undertaken when proposals are provided to OMB.)

- \* French Pete Area, Oregon
- \* Lone Peak, Utah
- \* Oregon Dunes, Oregon
- \* Aravaipa Canyon, Arizona
- \* Beartooth - Absaroka, Montana and Wyoming

Proposed Enlargements: (Quick interagency review must be undertaken when proposals are provided to OMB.)

- \* Idaho and Salmon River Break, Idaho
- \* Guadalupe Escarpment, New Mexico, Texas
- \* Kenai Moose Range, Alaska

- Federal Water Pollution Control Act Amendments: (1) allow EPA to move more swiftly when chemicals potentially injurious to human health are being discharged (Sec. 307(a)); (2) correct remaining problems and accelerate our progress towards achieving the Act's 1983 goals of fishable and swimmable waters; and, (3) delegation to the States of certain FWPCA programs including wetlands protection.
- Reform the Mining Law of 1872: provide a leasing system for publicly owned hardrock minerals with clear Federal discretionary authority over mineral exploration and development on the public lands.



- Implementation Legislation for the Treaty for the Conservation of Migratory Birds and their Environment.
  - Consolidate EPA's Grant Programs: provides for a comprehensive environmental implementation grant program for all EPA grants to State and local governments.
  - Urban transportation: as existing programs expire, change the funding of transportation programs in urban areas so that cities will have greater flexibility to decide how their transportation needs can best be met without the rigidity created by categorical Federal programs which favor particular modes of transportation.
  - Control of Exotic Species: the Secretary of Agriculture is to develop legislation that will protect United States' ecosystems from the introduction of exotic (foreign) wildlife.
  - Amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA): change the focus of EPA's chemical registration program from the 40,000 formulated products to the 1,400 basic active chemical ingredients in order to more effectively analyze the benefits and risks of these compounds to society.
- C. Those which may develop as the result of a study:
- Amend the Federal Coal Mine Health and Safety Act of 1969 and the Federal Metal and Non-metallic Mine Safety Act: support strengthening these Acts to assure that our increasing energy demands will not be at the expense of the men and women who mine such minerals.
  - Workers' Compensation Reform: initiatives will be explored to protect workers, including reforms that might be undertaken in the coverage of occupationally induced diseases by State and Federal worker compensation systems.

- Coal Lease Cancellation: study the need for legislation to allow the condemnation of outstanding rights where essential to prevent environmental damage.